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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 107, 120, 121, 124, 125, 126, 127, 142, and 146

RIN 3245–AG80

Civil Penalties Inflation Adjustments

AGENCY: Small Business Administration.

ACTION: Interim final rule with request for comments.

SUMMARY: The Small Business Administration (SBA) is amending its regulations to adjust for inflation the amount of certain civil monetary penalty that is within the jurisdiction of the agency. This adjustment is required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. This rule also makes technical amendments to the regulations governing misrepresentations in SBA contracting programs to add a cross reference to the regulation that contains the applicable penalty amounts for misrepresentations and to correct a citation in the same regulations. Finally, the rule makes a technical amendment to an existing regulation governing small business investment companies to add a cross reference to a new civil penalty provision.

DATES: *Effective Date:* This rule is effective on August 1, 2016.

Comment Date: Comments must be received on or before July 18, 2016.

ADDRESSES: You may submit comments, identified by RIN 3245–AG80 by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or Hand Delivery/Courier:* Arlene Embrey, 409 Third Street SW., Washington, DC 20416.

SBA will post all comments on *http://www.Regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.Regulations.gov,* please submit the information to Arlene Embrey, Trial Attorney, 409 Third Street SW., Washington, DC 20416 and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make a final determination of whether the information will be published or not.

FOR FURTHER INFORMATION CONTACT: Arlene Embrey, 202–205–6976, or at *Arlene.embrey@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Inflation Adjustment Improvements Act), Public Law 114–74, 129 Stat. 584. This act amended the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, 104 Stat 890 (the 1990 Inflation Adjustment Act), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The 2015 Inflation Adjustment Improvements Act requires agencies to issue an interim final rule (IFR) to: (1) Adjust the level of civil monetary penalties with an initial "catch-up" adjustment; and (2) make subsequent annual adjustments for inflation beginning January 2017.

Based on the definition of a "civil monetary penalty" in the 1990 Inflation Adjustment Act, agencies are to make adjustments to the civil penalties that (i) are for a specific monetary amount as provided by federal law or have a maximum amount provided for by Federal law; (ii) are assessed or enforced by an agency; and (iii) are enforced or assessed in an administrative proceeding or a civil action in the Federal courts. SBA has identified the civil penalties SBA is responsible for assessing or enforcing and in this IFR sets forth the initial adjustments to those penalties that fall within the definition of civil monetary penalties. Penalties that are stated as a percentage of an indeterminate amount or as a function of a violation (penalties that encompass actual damages incurred) are not adjusted by this rule.

The formula for making this initial adjustment under the 2015 Inflation Adjustment Improvement Act requires agencies to use as a base, the Consumer Price Index for the month of October preceding the adjustment, which in this instance is October 2015. SBA has not previously adjusted any of the penalties discussed in this rule. Therefore, based on this formula and the OMB guidance implementing the inflation adjustment requirements, for each penalty being adjusted in this rule, SBA identified the year and corresponding amounts for which the maximum penalty level or range was last established or adjusted. SBA then modified the applicable penalty or penalty ranges by (1) identifying the last date a penalty or penalty range was modified; (2) multiplying the current penalty or penalty range by a multiplier identified for the applicable year in which the penalty or penalty range was last established or modified based on the Consumer Price Index for October 2015; and (3) ensuring that the product of (1) and (2) did not exceed 150% of the penalty or penalty range that was in effect on November 2, 2015.

II. Civil Money Penalties Adjusted by This Rule

This rule makes adjustments to civil monetary penalties authorized by the Small Business Act, the Small Business Investment Act of 1958 (SBIAct), the Program Fraud Civil Remedies Act and the Byrd Amendment to the Federal Regulation of Lobbying Act. These penalties and the implementing regulations are discussed below.

1. 13 CFR 107.665

SBA licenses, regulates and provides financial assistance to financial entities called small business investment companies (SBICs). Pursuant to section 315 of the Small Business Investment Act of 1958, 15 U.S.C. 687g, SBA may impose a penalty on any SBIC that fails to comply with SBA's regulations or directives governing the filing of regular or special reports. That civil penalty is not more than $100 for each and every day of the continuance of the SBIC's failure to file such report, unless the SBIC can show that its failure was due to a reasonable cause. SBA has not incorporated this penalty in its regulation. Therefore, a new section is being added to 13 CFR part 107 that will include the adjusted civil penalty.

The adjusted civil penalty amount was calculated by multiplying the current civil penalty by the multiplier of 7.22912 established under the 2015 Inflation Adjustment Improvements Act for civil penalties last amended or established in 1966, to reach a product of $723 rounded to the nearest dollar. However, because the adjusted amount is more than the catch up adjustment cap of 150% (or $250), the new civil penalty amount is $250 for each and every day the SBIC fails to file the respective report.

2. 13 CFR 120.465

According to the regulations at § 120.465, any small business lending company (SBLC) that violates a regulation or written directive issued by the SBA Administrator regarding the filing of any regular or special report is subject to a civil penalty of not more than $5,000 for each day the company fails to file the report, unless the small business lending company can show that there is reasonable cause for its failure to file. This penalty, authorized by section 23(j) of the Small Business Act, 15 U.S.C. 650(j), was established in 2004.

This rule amends § 120.465(b) to adjust the civil penalty from not more than $5,000 for each day of the continuance of the failure to file the respective report to not more than $6,229 for each day the small business lending company fails to file the report. The new civil penalty amount was calculated by multiplying the current civil penalty by the multiplier of 1.24588 established under the 2015 Inflation Adjustment Improvements Act for civil penalties last amended or established in 2004, to reach a product of $6,229, rounding to the nearest dollar. The adjusted amount is not more than the catch up adjustment cap of 150% (or $7,500) allowed.

3. 13 CFR 142.1(b)

SBA has promulgated regulations at 13 CFR part 142 to implement the civil penalties authorized by the Program Fraud Civil Remedies Act of 1986 (PFCRA), 31 U.S.C. 3801–3812. Under the regulation, a person who submits, or causes to be submitted, a false claim or a false statement to SBA is subject to a civil penalty of not more than $5,000 for each statement or claim. This penalty is applicable to violations for making misrepresentations to obtain benefits from an SBA financial assistance or contracting program, has not been adjusted previously.

This rule amends § 142.1(b) to adjust the current civil penalty amount from $5,000 to $10,781 per claim. The adjusted amount was calculated by multiplying the current penalty of $5,000 by the multiplier established under the 2015 Inflation Adjustment Improvements Act of 2.15628 for civil penalties last established or amended by statute in 1986, to reach a product of $10,781, rounding to the nearest dollar. The adjusted amount is less than the 150% catch-up adjustment cap (or $12,500) allowed.

4. 13 CFR 146.400(a), (b), (e)

SBA has promulgated regulations at 13 CFR part 146 to govern lobbying activities by recipients of federal financial assistance. These regulations implement the authority in 31 U.S.C. 1352, which was established in 1989 and imposes penalties on any recipient that fails to comply with certain requirements in the part. Specifically, penalties may be imposed on those who make prohibited expenditures or fail to file the required disclosure forms or to amend such forms, if necessary. The regulations at § 146.400(a) and (b) currently impose "a civil penalty of not less than $10,000 and no more than $100,000" for each prohibited expenditure or failure to file or amend the disclosure forms. These penalties have not been adjusted previously. Notwithstanding the penalties in paragraphs (a) and (b) described above, the lobbying regulations at § 146.400(e) provide that first offenders under those paragraphs are subject to a maximum civil penalty of $10,000, absent aggravating circumstances.

This rule amends § 146.400 (a) and (b), to adjust the current civil penalty amounts from "not less than $10,000 and not more than $100,000" to "not less than $18,936 and not more than $189,361." The penalty in paragraph (e) is being amended from $10,000 to $18,936. The new civil penalty amounts were calculated by multiplying the current civil penalty of $10,000 by the multiplier of 1.89361 established under the 2015 Inflation Adjustment Improvements Act for civil penalties last established or amended by statute in 1989 to reach a product of $18,936, rounding to the nearest dollar. The current maximum civil penalty of $100,000 was also adjusted using the same method and multiplier to reach a product of $189,361. Each of these adjusted penalty amounts is less than the allowed 150% catch-up adjustment cap (or $25,000 and $250,000, respectively).

III. Technical Amendments

This rule also makes technical amendments to six program-specific regulations that reference the civil monetary penalties for misrepresentation by an applicant for certain SBA program benefits. Each of these regulations, with the heading *Civil Penalties,* states that program participants or applicants are subject to penalties "under the False Claims Act and under the Program Fraud Civil Remedies Act" but do not reference SBA's PFCRA implementing regulations. In this rule, SBA amends each of the following regulations to add that reference: (1) § 121.108(e)(2) (for misrepresentation of an applicant's size status as a small business); (2) § 121.411(i)(2) (for misrepresentation in SBA's Section 8(d) Subcontracting Program); (3) § 124.1015(e)(2) (for misrepresentation of status as a small disadvantaged business); (4) § 125.29(e)(2) (for misrepresentation of status as a small disadvantaged veteran owned small business); (5) § 126.900(e)(2) (for misrepresentation of HUBZone status); and (6) § 127.700(e)(2) (for misrepresentation of status as either a Woman Owned Small Business or an Economically Disadvantaged Woman Owned Small Business). This rule also corrects a typographical error in each of the regulations listed in order to correct the statutory citation for PFCRA, which currently reads "331 U.S.C. 3801" instead of "31 U.S.C. 3801".

Finally, this rule also makes a technical amendment to § 107.670(b) to replace the statutory reference to section 315 of the Small Business Investment Act with a reference to § 107.665, which is a new section being added by this rule to implement the penalty authorized by section 315 of the SBIAct.

IV. Justification for Interim Final Rule

The 2015 Inflation Adjustment Improvements Act specifically authorizes agencies to promulgate rulemaking for the adjustment to their civil monetary penalties through an interim final rule.

Compliance With Executive Orders 12866, 12988, and 13132, and the Paperwork Reduction Act (44 U.S.S. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this interim final rule does not constitute a significant regulatory action under Executive Order 12866. This is also not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For the purpose of Executive Order 13132, SBA has determined that the rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this interim final rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act

SBA has determined that this rule does not impose additional reporting or recordkeeping requirements.

Regulatory Flexibility Act (RFA)

The RFA requires agencies to consider the effect of their regulatory actions on small entities, including small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule the agency must prepare an analysis that describes whether the impact of the rule will have a significant economic impact on a substantial number of such small entities. However, the RFA requires such analysis only where notice and comment rulemaking is required. As stated above, SBA has express statutory authority to issue an interim final rule. Since notice and comment is not required before this rule is issued, SBA is not required to prepare a regulatory analysis.

List of Subjects

13 CFR Part 107

Investment companies, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 120

Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Small businesses.

13 CFR Part 124

Administrative practice and procedure, Government procurement, Hawaiian Natives, Indians—business and finance, Minority businesses, Reporting and recordkeeping requirements, Technical assistance.

13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance, Veterans.

13 CFR Part 126

Administrative practice and procedure, Government procurement, Penalties, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 127

Government contracts, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 142

Administrative practice and procedure, Claims, Fraud, Penalties.

13 CFR Part 146

Government contracts, Grant programs, Loan programs, Lobbying, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, SBA amends 13 CFR parts 107, 120, 121, 124, 125, 126, 127, 142, and 146 as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

■ 1. The authority citation for part 107 is revised to read as follows:

Authority: 15 U.S.C. 681 *et seq.*, 683, 687(c), 687b, 687d, 687g, 687m.

■ 2. Add § 107.665 to subpart F to read as follows:

§ 107.665 Civil penalties.

Except as provided in § 107.670, a Licensee that violates any regulation or written directive issued by SBA, requiring the filing of any regular or special report pursuant to this part, shall be fined a civil penalty of not more than $250 for each day the Licensee fails to file such report. The civil penalties provided for in this section shall accrue to the United States and may be recovered in a civil action brought by the SBA.

§ 107.670 [Amended]

■ 3. In § 107.670(b), remove the words "provision of section 315(a) of the Act" and add in their place the words "stated in § 107.665".

PART 120—BUSINESS LOANS

■ 4. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h), and note, 636(a), (h) and (m), 650, 687(f), 696(3), and 697(a) and (e); Public Law 111–5, 123 Stat. 115, Public Law 111–240, 124 Stat. 2504.

§ 120.465 [Amended]

■ 5. Paragraph (b) of § 120.465 is amended by removing "$5,000" and adding in its place "$6,299".

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 6. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

■ 7. Revise § 121.108(e)(2) to read as follows:

§ 121.108 What are the penalties for misrepresentation of size status?

* * * * *

(e) * * *

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812 and any other applicable laws or regulations, including 13 CFR part 142.

* * * * *

■ 8. Revise § 121.411(i)(2) to read as follows:

§ 121.411 What are the size procedures for SBA's Section 8(d) Subcontracting Program?

* * * * *

(i) * * *

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812 and any other applicable laws or regulations, including 13 CFR part 142.

* * * * *

PART 124—8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

■ 9. The authority citation for part 124 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d), 644 and Pub. L. 99–661, Pub. L. 100–656, sec. 1207, Pub. L. 101–37, Pub. L. 101–574, section 8021, Pub. L. 108–87, and 42 U.S.C. 9815.

■ 10. Revise § 124.1015(e)(2) to read as follows:

§ 124.1015 What are the requirements for representing SDB status, and what are the penalties for misrepresentation?

* * * * *

(e) * * *

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties

under the False Claims Act, 31 U.S.C. 3729–3733, the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812, and any other applicable laws or regulations, including 13 CFR part 142.

* * * * *

PART 125—GOVERNMENT CONTRACTING PROGRAMS

■ 11. The authority citation for part 125 continues to read as follows:

Authority: 15 U.S.C. 632(p), (q); 634(b)(6), 637, 644, 657f, and 657q.

■ 12. Revise § 125.29(e)(2) to read as follows:

§ 125.29 What are the requirements for representing SDVO SBC status, and what are the penalties for misrepresentation?

* * * * *

(e) * * *

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812, and any other applicable laws or regulations, including 13 CFR part 142.

* * * * *

PART 126—HUBZONE PROGRAM

■ 13. The authority citation for part 126 continues to read as follows:

Authority: 15 U.S.C. 632(a), 632(j), 632(p), 644 and 657a.

■ 14. Revise § 126.900(e)(2) to read as follows:

§ 126.900 What are the requirements for representing HUBZone status, and what are the penalties for misrepresentation?

* * * * *

(e) * * *

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812, and any other applicable laws or regulations, including 13 CFR part 142.

* * * * *

PART 127—WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM

■ 15. The authority citation for part 127 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 637(m), and 644.

■ 16. Revise § 127.700(e)(2) to read as follows:

§ 127.700 What are the requirements for representing EDWOSB or WOSB status, and what are the penalties for misrepresentation?

* * * * *

(e) * * *

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812, and any other applicable laws or regulations, including 13 CFR part 142.

* * * * *

PART 142—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS

■ 17. The authority citation for part 142 continues to read as follows:

Authority: 15 U.S.C. 634(b); 31 U.S.C. 3803(g)(2).

§ 142.1 [Amended]

■ 18. Paragraph (b) of § 142.1 is amended by removing "$5,000" and adding in its place "$10,781".

PART 146—NEW RESTRICTIONS ON LOBBYING

■ 19. The authority citation for part 146 continues to read as follows:

Authority: Section 319, Pub. L. 101–121 (31 U.S.C. 1352); 15 U.S.C. 634(b)(6).

§ 146.400 [Amended]

■ 20. Paragraphs (a), (b), and (e) of § 146.400 are amended by removing "$10,000" wherever it appears and adding in its place "$18,936" and by removing "$100,000" and adding in its place "$189,361".

Maria Contreras-Sweet,
Administrator.

[FR Doc. 2016–11868 Filed 5–18–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0703; Directorate Identifier 2013–NM–004–AD; Amendment 39–18518; AD 2016–10–07]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. This AD was prompted by a report of a pilot commanding an in-flight engine shut down in response to a low oil pressure warning indication. Further investigation revealed the mounting studs in the engine mounted alternating current (AC) generator mounting plate were pulled out of position and the threaded interface in the plate was corroded. This AD requires repetitive inspections for discrepancies on certain AC generator mounting adapters, and replacing discrepant adapters with serviceable ones. This AD also requires revising the maintenance program to incorporate a repetitive task specified in certain temporary revisions. We are issuing this AD to detect and correct corrosion in the AC generator mounting plate, which could result in a gap between the AC generator and the generator mounting plate, and cause loss of engine oil and consequent engine failure.

DATES: This AD is effective June 23, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 23, 2016.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone: 416–375–4000; fax: 416–375–4539; email: *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2013–0703.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2013–0703; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West

Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Assata Dessaline, Aerospace Engineer, Avionics and Services Branch, ANE–172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7301; fax: 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc. Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. The SNPRM published in the **Federal Register** on January 13, 2016 (81 FR 1563), ("the SNPRM"). We preceded the SNPRM with a notice of proposed rulemaking (NPRM) that published in the **Federal Register** on August 28, 2013 (78 FR 53080), ("the NPRM"). The NPRM proposed to require repetitive inspections for discrepancies on certain AC generator mounting adapters, and replacing discrepant adapters with serviceable ones. The NPRM also proposed to require revising the maintenance program to incorporate a repetitive task specified in certain temporary revisions. The NPRM was prompted by a report of a pilot commanding an in-flight engine shut down in response to a low oil pressure warning indication. Further investigation revealed the mounting studs in the engine mounted AC generator mounting plate were pulled out of position and the threaded interface in the plate was corroded.

The SNPRM proposed to require the actions specified in the NPRM, and to expand the proposed applicability. We are issuing this AD to detect and correct corrosion in the AC generator mounting plate, which could result in a gap between the AC generator and the generator mounting plate, and cause loss of engine oil and consequent engine failure.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive, CF–2012–29R1, effective April 28, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Bombardier, Inc. Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. The MCAI states:

> An incident has been reported, on the DHC–8 aeroplane, where a pilot commanded in-flight engine shut down in response to an engine low oil pressure warning indication.
>
> Further investigation revealed the mounting studs in the engine mounted alternating current (AC) generator mounting plate were pulled out of position and the threaded interface in the plate corroded. This resulted in a gap between the AC generator and the generator mounting plate, leading to the loss of engine oil and the ensuing illumination of the associated engine low oil pressure warning indication.
>
> To ensure the integrity of the affected units, Part I of this [Canadian] AD mandates an inspection of the affected AC generator mounting adapters part numbers (P/N) 31708–500 or 31708–501, and, as applicable, replacement with new or serviceable mounting plates.
>
> Part II of this [Canadian] AD mandates the incorporation of a repeat Maintenance Review Board (MRB) inspection applicable to the replacement of the AC generator mounting adapters P/Ns 31708–510 or 31708–511 only.
>
> Revision 1 of this [Canadian] AD is issued to include additional aeroplane serial numbers (003 through 018) to the Applicability section, and to clarify the compliance schedules in Part I B. and Part II below [in this Canadian AD].

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2013–0703.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the SNPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the SNPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the SNPRM.

Related Service Information Under 1 CFR Part 51

Bombardier, Inc. has issued Service Bulletin 8–24–88, Revision A, dated September 23, 2014. This service information describes repetitive inspections for discrepancies on certain AC generator mounting adapters, and replacing discrepant adapters with serviceable ones.

Bombardier, Inc. has also issued the following de Havilland service information, which introduces MRB Report Task 2420/14, "Functional Check (pull test) of the AC generator adapter kit."

- de Havilland Dash 8 Series 100 MRB Report Temporary Revision MRB–153, dated July 10, 2012, to Section 2—Systems, in Part 1 of the de Havilland Dash 8 Series 100 Maintenance Program Manual PSM 1–8–7.
- de Havilland Dash 8 Series 200 MRB Report Temporary Revision MRB 2–31, dated July 10, 2012, to Section 2—Systems, in Part 1 of the de Havilland Dash 8 Series 200 Maintenance Program Manual PSM 1–82–7.
- de Havilland Dash 8 Series 300 MRB Report Temporary Revision MRB 3–162, dated July 10, 2012, to Section 2—Systems, in Part 1 of the de Havilland Dash 8 Series 300 Maintenance Program Manual PSM 1–83–7.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 88 airplanes of U.S. registry.

We also estimate that it takes about 6 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts cost about $4,000 per product. Based on these figures, we estimate the cost of the AD on U.S. operators to be $396,880, or $4,510 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–10–07 Bombardier, Inc.: Amendment 39–18518. Docket No. FAA–2013–0703; Directorate Identifier 2013–NM–004–AD.

(a) Effective Date

This AD is effective June 23, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes; certificated in any category; serial numbers 003 through 672 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical power.

(e) Reason

This AD was prompted by a report of a pilot commanding an in-flight engine shut down in response to a low oil pressure warning indication. Further investigation revealed the mounting studs in the engine mounted alternating current (AC) generator mounting plate were pulled out of position and the threaded interface in the plate corroded. We are issuing this AD to detect and correct corrosion in the AC generator mounting plate, which could result in a gap between the AC generator and the generator mounting plate, and cause loss of engine oil and consequent engine failure.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection of AC Generator Mounting Adaptor and Corrective Action

Within 6,000 flight hours, or 36 months, or when the AC generator is removed for service, whichever occurs first, after the effective date of this AD: Do a general visual inspection and a mechanical inspection for discrepancies (*i.e.*, damage, corrosion, and failed mechanical inspection) on AC generator mounting adapters having part number (P/N) 31708–500 and P/N 31708–501, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–24–88, Revision A, dated September 23, 2014. If any discrepancy (*i.e.*, damage, corrosion, or failed mechanical inspection) is found, before further flight, replace the AC generator mounting adapter with a serviceable mounting adapter having P/N 31708–510, P/N 31708–511, P/N 31708–500, or P/N 31708–501, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–24–88, Revision A, dated September 23, 2014.

(h) Repetitive Inspections

For in-service mounting adapters that have P/N 31708–500 or P/N 31708–501: Repeat the general visual and mechanical inspection required by paragraph (g) of this AD thereafter at intervals not to exceed 6,000 flight hours, or 36 months after the most recent inspection, or when the AC generator is removed for service, whichever occurs first.

(i) Replacement of Certain AC Generator Mounting Adaptors

For airplanes having AC generator mounting adapters that have P/N 31708–500 or P/N 31708–501: Within the later of the times specified in paragraphs (i)(1) and (i)(2) of this AD, replace the AC generator mounting adapter with a new AC generator mounting adapter having P/N 31708–510 or P/N 31708–511.

(1) Before the accumulation of 120 months on the AC generator mounting adapter.

(2) Within 12 months, or 2,000 flight hours, or when the generator is removed from service, whichever occurs first after the effective date of this AD.

(j) Airplane Maintenance Program Revision

For airplanes having AC generator mounting adapters that have P/N 31708–510 or P/N 31708–511: Within 30 days after the effective date of this AD, revise the airplane maintenance or inspection program, as applicable, by incorporating maintenance review board (MRB) Report Task 2420/14, "Functional Check (pull test) of the AC generator adapter kit," in the applicable maintenance program manual specified in paragraph (j)(1), (j)(2), or (j)(3) of this AD. The initial compliance time for MRB Task 2420/14 is prior to the accumulation of 10,000 total flight hours or within 60 months since installation of the part, whichever occurs first.

(1) For Model DHC–8–102, –103, and –106 airplanes: de Havilland Dash 8 Series 100 MRB Report Temporary Revision MRB–153, dated July 10, 2012, to Section 2—Systems, of the de Havilland Dash 8 Series 100 Maintenance Program Manual PSM 1–8–7.

(2) For Model DHC–8–201 and –202 airplanes: de Havilland Dash 8 Series 200 MRB Report Temporary Revision MRB 2–31, dated July 10, 2012, to Section 2—Systems, of the de Havilland Dash 8 Series 200 Maintenance Program Manual PSM 1–82–7.

(3) For Model DHC–8–301, –311, and –315 airplanes: de Havilland Dash 8 Series 300 MRB Report Temporary Revision MRB 3–162, dated July 10, 2012, to Section 2—Systems, of the de Havilland Dash 8 Series 300 Maintenance Program Manual PSM 1–83–7.

(k) No Alternative Actions or Intervals

After the maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.*, inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (m)(1) of this AD.

(l) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 8–24–88, dated December 13, 2011, which is not incorporated by reference in this AD.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7300; fax: 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC

approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2012–29R1, dated April 28, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2013–0703.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (o)(3) and (o)(4) of this AD.

(o) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Bombardier Service Bulletin 8–24–88, Revision A, dated September 23, 2014.

(ii) de Havilland Dash 8 Series 100 Maintenance Review Board (MRB) Report Temporary Revision MRB–153, dated July 10, 2012, to Section 2—Systems, of Part 1 of the de Havilland Dash 8 Series 100 Maintenance Program Manual PSM 1–8–7.

(iii) de Havilland Dash 8 Series 200 MRB Report Temporary Revision MRB 2–31, dated July 10, 2012, to Section 2—Systems, of Part 1 of the de Havilland Dash 8 Series 200 Maintenance Program Manual PSM 1–82–7.

(iv) de Havilland Dash 8 Series 300 MRB Report Temporary Revision MRB 3–162, dated July 10, 2012, to Section 2—Systems, of Part 1 of the de Havilland Dash 8 Series 300 Maintenance Program Manual PSM 1–83–7 MRB Report.

(3) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone: 416–375–4000; fax: 416–375–4539; email: *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on May 6, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–11427 Filed 5–18–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8431; Directorate Identifier 2015–NM–128–AD; Amendment 39–18517; AD 2016–10–06]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes. This AD was prompted by a determination that the network interface installed between the Information Management System (IMS) 6000 unit and the Cabin Entertainment System (CES) network could affect the Aircraft Control Domain (ACD), and result in the transmission of misleading navigational information to the flightcrew. This AD requires inspecting the network interface installation between the IMS and the CES, and disconnecting the installation, if necessary. We are issuing this AD to prevent the transmission of misleading navigational information, which could adversely affect the ability of the flightcrew to maintain the safe flight and landing of the airplane.

DATES: This AD is effective June 23, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 23, 2016.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514 855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8431.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8431; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Assata Dessaline, Aerospace Engineer, Avionics and Services Branch, ANE–172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7301; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes. The NPRM published in the **Federal Register** on January 13, 2016 (81 FR 1568) ("the NPRM"). The NPRM was prompted by a determination that the network interface installed between the IMS 6000 unit and the CES network could affect the ACD, and result in the transmission of misleading navigational information to the flightcrew. The NPRM proposed to require inspecting the network interface installation between the IMS and the CES, and disconnecting the installation, if necessary. We are issuing this AD to prevent the transmission of misleading navigational information, which could adversely affect the ability of the flightcrew to maintain the safe flight and landing of the airplane.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2015–19, dated July 20, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes. The MCAI states:

> It was discovered that on certain aeroplanes, the network interface installed between the Information Management System (IMS) 6000 unit and the Cabin Entertainment System (CES) network may affect the Aircraft Control Domain (ACD). This could potentially compromise the operational integrity of the avionics system and result in misleading navigational information to the flight crew. Misleading navigational information could have adverse effects on the safe operation of the aeroplane.
>
> This [Canadian] AD mandates the [general visual] inspection [to determine if pins are present at positions 25, 27, 48, and 50] and disconnection, as required, of the network interface installation between the IMS and the CES.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8431.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed, except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information, which describes procedures for inspecting the network interface installation between the IMS and the CES, and disconnecting the installation, if necessary.

- Service Bulletin 700–46–5005, Revision 02, dated June 18, 2015 (for Model BD–700–1A11 airplanes).
- Service Bulletin 700–46–6005, Revision 02, dated June 18, 2015 (for Model BD–700–1A10 airplanes).

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 77 airplanes of U.S. registry.

We also estimate that it takes about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $6,545, or $85 per product.

In addition, we estimate that any necessary follow-on action takes about 3 work-hours, for a cost of $255 per product. We have no way of determining the number of aircraft that might need this action.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–10–06 Bombardier, Inc.: Amendment 39–18517. Docket No. FAA–2015–8431; Directorate Identifier 2015–NM–128–AD.

(a) Effective Date

This AD is effective June 23, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Bombardier, Inc. airplanes, certificated in any category, specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model BD–700–1A10 airplanes, serial numbers 9381, 9432 through 9708 inclusive; 9711 through 9718 inclusive; and 9720 through 9730 inclusive.

(2) Model BD–700–1A11 airplanes, serial numbers 9386, 9401, 9445 through 9707 inclusive; 9710 through 9717 inclusive; and 9722, 9732, 9734, and 9737.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Reason

This AD was prompted by a determination that the network interface installed between the Information Management System (IMS) 6000 unit and the Cabin Entertainment System (CES) network could affect the Aircraft Control Domain (ACD), and result in the transmission of misleading navigational information to the flightcrew. We are issuing this AD to prevent the transmission of misleading navigational information, which could adversely affect the ability of the flightcrew to maintain the safe flight and landing of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection and Disconnection, if Necessary

Within 15 months after the effective date of this AD: Do a general visual inspection of the network interface installation between the IMS and CES to determine if pins are present at positions 25, 27, 48, and 50; and if any pins are present, before further flight, disconnect the installation; in accordance with the Accomplishment Instructions of the applicable service information specified in paragraph (g)(1) or (g)(2) of this AD.

(1) Bombardier Service Bulletin 700–46–5005, Revision 02, dated June 18, 2015 (for Model BD–700–1A11 airplanes).

(2) Bombardier Service Bulletin 700–46–6005, Revision 02, dated June 18, 2015 (for Model BD–700–1A10 airplanes).

(h) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraph (h)(1), (h)(2), (h)(3), or (h)(4) of this AD, as applicable. This service information is not incorporated by reference in this AD.

(1) Bombardier Service Bulletin 700–46–5005, dated February 23, 2015.

(2) Bombardier Service Bulletin 700–46–5005, Revision 01, dated March 20, 2015.

(3) Bombardier Service Bulletin 700–46–6005, dated February 23, 2015.

(4) Bombardier Service Bulletin 700–46–6005, Revision 01, dated March 20, 2015.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2015–19, dated July 20, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8431.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (k)(4) of this AD.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Bombardier Service Bulletin 700–46–5005, Revision 02, dated June 18, 2015.

(ii) Bombardier Service Bulletin 700–46–6005, Revision 02, dated June 18, 2015.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514 855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on May 6, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–11457 Filed 5–18–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3634; Directorate Identifier 2014–NM–203–AD; Amendment 39–18521; AD 2016–10–10]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2014–20–01 for certain Bombardier, Inc. Model CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) airplanes. AD 2014–20–01 required repetitive inspections for any fuel leak in the right-hand landing lights compartment, and related investigative and corrective actions if necessary. AD 2014–20–01 also provides for an optional replacement of the connector of the fuel boost pump canister of the auxiliary power unit (APU), which terminates the repetitive inspections. This new AD requires replacing the connector of the fuel boost pump canister of the APU. This AD was prompted by the determination that a terminating action for the repetitive inspections is necessary. We are issuing this AD to detect and correct fuel leaks in the right-hand landing lights compartment, which, in combination with the heat generated by the taxi lights and landing lights on the ground reaching the auto-ignition temperature of the fuel, could result in ignition of any fuel or fumes present in the right-hand landing lights compartment.

DATES: This AD becomes effective June 23, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 20, 2014 (79 FR 59640, October 3, 2014).

ADDRESSES: For service information identified in this finale rule, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3634.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3634; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Assata Dessaline, Aerospace Engineer, Avionics and Services Branch, ANE–172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7301; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2014–20–01, Amendment 39–17974 (79 FR 59640, October 3, 2014) ("AD 2014–20–01"). AD 2014–20–01 applied to certain Bombardier, Inc. Model CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) airplanes. The NPRM published in the **Federal Register** on September 24, 2015 (80 FR 57543) ("the NPRM"). The NPRM was prompted by the determination that a terminating action for the repetitive inspections is necessary. The NPRM proposed to continue to require repetitive inspections for any fuel leak in the right-hand landing lights compartment, and related investigative and corrective actions. The NPRM also provided an optional replacement of the connector of the fuel boost pump canister of the APU, which terminates the repetitive inspections. We are issuing this AD to detect and correct fuel leaks in the right-hand landing lights compartment, which, in combination with the heat generated by the taxi lights and landing lights on the ground reaching the auto-ignition temperature of the fuel, could result in ignition of any fuel or fumes present in the right-hand landing lights compartment.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Emergency Airworthiness Directive CF–2014–21, dated July 10, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Bombardier, Inc. Model CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) airplanes. The MCAI states:

> Bombardier, Inc. has discovered fuel leakage in the auxiliary power unit (APU) fuel Boost Pump (BP) canister connector cavity. On some of those aeroplanes, leakage was also noticed at the APU fuel BP electrical conduit connection in the right hand landing light compartment. The root cause of the subject fuel leak is identified to be the improper length of the female connector keyway located in the fuel BP canister, causing a shift of the electrical harness and its seals.
>
> Available data indicates that on a hot day, due to the heat generated by the taxi light and/or landing lights on the ground, temperature in the landing light compartment can reach the fuel auto ignition temperature. Therefore, presence of any fuel in the right hand landing light compartment is considered to be a safety hazard [fuel or fumes present in the right-side landing lights compartment might ignite] that warrants mitigating action.
>
> In order to help mitigate the potential safety hazard precipitated by any fuel leakage in the right hand landing light compartment, Bombardier, Inc., has revised the Aircraft Flight Manual (AFM) through Temporary Revisions (TRs) 604/38 and 605/20 dated 16 June 2014 to restrict the operation of Taxi and Landing lights on the ground. Transport Canada issued Emergency [Canadian] AD CF–2014–17 [(*http://ad.easa.europa.eu/ad/CF-2014-17*), which corresponds to FAA AD 2014–15–17, Amendment 39–17919 (79 FR 44268, July 31, 2014)] to mandate incorporation of the above AFM TRs.
>
> To address the root cause of the subject fuel leakage from the APU fuel boost pump canister wiring conduit, Bombardier, Inc. issued Alert Service Bulletin (ASB) A605–28–008 that requires periodic [repetitive general visual] inspection[s] for fuel leaks and [applicable related investigative and corrective actions and] eventually the replacement of the discrepant fuel BP canister connectors [including related investigative and corrective actions] on affected aeroplanes. The ASB has been revised to include an additional inspection of the new connector wiring for damage and this [Canadian] AD is issued to mandate the compliance with ASB A605–28–008 Revision 2 requirements.

We also included compliance times for the terminating action. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3634.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for the NPRM

Mr. James Tyron stated that he supports the actions proposed in the NPRM, and asserted that the time and cost of repetitively inspecting these airplanes will be reduced as a result.

Request To Shorten a Certain Compliance Time

Mr. Connor McClintock requested that the connectors and wiring be inspected immediately instead of within 5 months or 150 flight hours after issuance of the AD, and those failing safety standards should likewise be replaced immediately to reduce further risk of an accidental fire. The commenter stated that the compliance times for replacing APU boost pump connectors, as described in paragraph (j) of the proposed AD, seems unnecessarily long. The commenter provided no technical justification for reducing this proposed compliance time.

We disagree with changing the compliance times for replacing APU boost pump connectors. AD 2014–15–17 revised the Aircraft Flight Manual to restrict the operation of taxi and landing lights on the ground to reduce the chance of a fire. In addition, the compliance time for replacing the APU boost pump connectors was developed by the manufacturer in concert with TCCA and it represents an interval that, when combined with the mitigating actions in AD 2014–15–17, will reduce the risk of fire. We have not changed the AD in this regard.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting this AD as proposed, except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 92 airplanes of U.S. registry.

The actions required by AD 2014–20–01 and retained in this AD take about 2 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that were required by AD 2014–20–01 is $170 per product.

We also estimate that it takes about 22 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $172,040, or $1,870 per product.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2014–20–01, Amendment 39–17974 (79 FR 59640, October 3, 2014), and adding the following new AD:

2016-10-10 Bombardier, Inc.: Amendment 39–18521. Docket No. FAA–2015–3634; Directorate Identifier 2014–NM–203–AD.

(a) Effective Date

This AD becomes effective June 23, 2016.

(b) Affected ADs

This AD replaces AD 2014–20–01, Amendment 39–17974 (79 FR 59640, October 3, 2014) ("AD 2014–20–01").

(c) Applicability

This AD applies to Bombardier, Inc. Model CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) airplanes, certificated in any category, serial numbers 5906, 5910, 5912, 5917, 5919 through 5932 inclusive, 5934, 5935, 5939, 5940, 5942, and 5948.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by a report of fuel leaks in the auxiliary power unit (APU) fuel boost pump canister connector cavity and in the right-hand landing lights compartment from the APU fuel boost pump electrical conduit connection, and by a determination that terminating action for the repetitive inspections is necessary. We are issuing this AD to detect and correct fuel leaks in the right-hand landing lights compartment, which, in combination with the heat generated by the taxi lights and landing lights on the ground reaching the auto-ignition temperature of the fuel, could result in ignition of any fuel or fumes present in the right-hand landing lights compartment.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Repetitive Inspections for Fuel Leaks, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2014–20–01, with no changes. Within 25 flight hours after October 20, 2014 (the effective date of AD 2014–20–01): Do a general visual inspection for any fuel leak in the right-hand landing lights compartment, and do all applicable related investigative and corrective actions, in accordance with Part A of the Accomplishment Instructions of Bombardier Alert Service Bulletin A605–28–008, Revision 02, dated July 9, 2014, except as required by paragraph (h) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the inspection thereafter at intervals not to exceed 8 flight hours until the replacement specified in paragraph (j) of this AD has been accomplished.

(h) Retained Corrective Action for Fuel Leak Found During Related Investigative Actions, With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2014–20–01, with no changes. If any fuel leak is found during the related investigative actions required by paragraph (g) of this AD: Before further flight, do the terminating action specified in paragraph (j) of this AD, or do corrective actions using a method approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Retained Inspection of Connector Wiring With No Changes

This paragraph restates the requirements of paragraph (j) of AD 2014–20–01, with no changes. For airplanes having new connectors installed, as specified in Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A605–28–008, dated April 21, 2014: Within 6 months or 150 flight hours after October 20, 2014 (the effective date of AD 2014–20–01), whichever occurs first, do a detailed inspection for damage (cuts) of the connector wiring, in accordance with Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A605–28–008, Revision 02, dated July 9, 2014. If any damage (cuts) is found on the wires, before further flight, replace the wire with a new wire identified in kit 605K28–008A, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A605–28–008, Revision 02, dated July 9, 2014.

(j) New Requirement: Terminating Action—Replacement of Connector

Within 6 months, or 150 flight hours, whichever occurs first, after the effective date of this AD, replace the connector of the fuel boost pump canister of the APU and do all applicable related investigative actions, in accordance with Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A605–28–008, Revision 02, dated July 9, 2014. Accomplishing this replacement terminates the repetitive actions required by paragraph (g) of this AD, provided that the following actions are done, as applicable.

(1) If any damage (cuts) is found on the wires, before further flight, replace the wire with a new wire identified in kit 605K28–008A, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A605–28–008, Revision 02, dated July 9, 2014.

(2) If any damage is found on an O-ring, before further flight, replace the O-ring with a new O-ring, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A605–28–008, Revision 02, dated July 9, 2014.

(3) If any fuel leak is found, before further flight, do corrective actions using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier,

Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Retained Credit for Previous Actions, With Revised Paragraph Reference

This paragraph restates paragraph (k) of AD 2014–20–01, with a revised paragraph reference. This paragraph provides credit for actions required by paragraph (j) of this AD, if those actions were performed before October 20, 2014 (the effective date of AD 2014–20–01), using Bombardier Alert Service Bulletin A605–28–008, Revision 01, dated May 28, 2014, which is not incorporated by reference in this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Emergency Airworthiness Directive CF–2014–21, dated July 10, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3634.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (n)(4) and (n)(5) of this AD.

(n) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on October 20, 2014 (79 FR 59640, October 3, 2014).

(i) Bombardier Alert Service Bulletin A605–28–008, Revision 02, dated July 9, 2014.

(ii) Reserved.

(4) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com.*

(5) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on May 9, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–11682 Filed 5–18–16; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 436

Disclosure Requirements and Prohibitions Concerning Franchising

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Final rule amendments.

SUMMARY: The FTC announces revised monetary thresholds for three exemptions from the Franchise Rule. The FTC is required to adjust the size of the monetary thresholds every fourth year based upon the Consumer Price Index for all urban consumers published by the Department of Labor.

DATES: This final rule is effective on July 1, 2016.

FOR FURTHER INFORMATION CONTACT: Craig Tregillus, Franchise Rule Coordinator, Division of Marketing Practices, FTC, 600 Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–2970, *ctregillus@ftc.gov.*

SUPPLEMENTARY INFORMATION: The FTC's Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising" (Franchise Rule or Rule) [1] provides three exemptions based on a monetary threshold: The "minimum payment exemption," [2] the "large franchise investment exemption" [3] and the "large franchisee exemption." [4] The Rule requires the Commission to "adjust the size of the monetary thresholds every fourth year based upon the . . . Consumer Price Index for all urban consumers [CPI–U] published by the Department of Labor." [5] This requirement, added by the 2007 amendments to the Rule, took effect on July 1, 2007, so that franchisors would have a one-year phase-in period within which to comply with the amended Rule's revised disclosure requirements before the July 1, 2008, final compliance deadline.[6]

As required by the Rule, the Commission revised the three monetary thresholds to reflect inflation in the CPI–U from 2007 through 2011 of 8.49 percent.[7] The adjusted thresholds, which took effect on July 1, 2012, raised the minimum payment exemption from $500 to $540; the large franchise investment exemption from $1 million to $1,084,900; and the large franchisee exemption from $5 million to $5,424,500.[8]

We base the exemption monetary thresholds that will take effect on July 1, 2016, on the increase in the CPI–U between 2007 and 2015. During this period, the annual average value of the Consumer Price Index for all urban consumers and all items increased by 14.31 percent—from an index value of 207.342 to a value of 237.017.[9] Applying the percentage increase to the three monetary thresholds increases the thresholds as follows:

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[1] 16 CFR part 436.

[2] 16 CFR 436.8(a)(1).

[3] 16 CFR 436.8(a)(5)(i).

[4] 16 CFR 436.8(a)(5)(ii).

[5] 16 CFR 436.8(b).

[6] 72 FR 15444 (Mar. 30, 2007).

[7] 77 FR 36149, 36150 (June 18, 2012).

[8] *Id.*

[9] Bureau of Labor Statistics, CPI Detailed Report: Data for February 2016, Table 24, p. 72, *available at http://www.bls.gov/cpi/cpid1602.pdf.*

Exemption	2007 base	Adjusted 2016 threshold
Minimum Payment	$500	[10] $570
Large Franchise Investment	1,000,000	1,143,100
Large franchisee	5,000,000	5,715,500

Because the calculation of these thresholds is purely ministerial in nature and implements the Rule's mandatory adjustment mechanism, these adjustments are exempt from the rulemaking procedures specified in section 18 of the FTC Act.[11] In addition, the Commission has determined that notice and comment are unnecessary under the Administrative Procedure Act (APA) for the same reason. The Commission, therefore, has omitted notice and comment for good cause as provided by section 553(b)(B) of the APA.[12] For this reason, the requirements of the Regulatory Flexibility Act also do not apply.[13] Accordingly, the adjusted thresholds will take effect on July 1, 2016.

List of Subjects in 16 CFR Part 436

Advertising, Business and industry, Franchising, Trade practices.

Rule Amendments

For the reasons set out in the preamble of this document, the Federal Trade Commission amends 16 CFR part 436 as follows:

PART 436—DISCLOSURE REQUIREMENTS AND PROHIBITIONS CONCERNING FRANCHISING

■ 1. The authority citation for part 436 continues to read as follows:

Authority: 15 U.S.C. 41–58.

§ 436.8 [Amended]

■ 2. Amend § 436.8 as follows:
■ a. In paragraph (a)(1), remove "$540" and, in its place, add "$570";
■ b. In paragraph (a)(5)(i), remove both references to "$1,084,900" and, in their place, add "$1,143,100"; and
■ c. In paragraph (a)(5)(ii), remove "$5,424,500" and, in its place, add "$5,715,500".

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 2016–11789 Filed 5–18–16; 8:45 am]

BILLING CODE 6750–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–10071; 34–77693; 39–2509; IC–32091]

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the Commission) is adopting revisions to the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) Filer Manual and related rules to reflect updates to the EDGAR system. The updates are being made primarily to support the 2016 XBRL taxonomies; add new submission form types SBSE, SBSE/A, SBSE–A, SBSE–A/A, SBSE–BD, SBSE–BD/A, SBSE–C and SBSE–W pursuant to Section 15F of the Securities Exchange Act of 1934 (the Exchange Act) and Rules 15Fb1–1 through 15Fb6–2 thereunder; add submission form types 17HACON, 17HACON/A, 17HQCON and 17HQCON/A pursuant to Rules 17h–1T and 17h–2T under the Exchange Act; and permit a value of zero in addition to the currently allowable numeric values in the "Current Number of Employees" field on the "Disclosure Requirements" screen of the Regulation Crowdfunding submission form types C, C/A and C–U. The EDGAR system was upgraded to support the new 2016 XBRL taxonomies on March 7, 2016. The EDGAR system is scheduled to be upgraded to support the other functionalities on April 25, 2016.

DATES: Effective May 19, 2016 The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of May 19, 2016.

FOR FURTHER INFORMATION CONTACT: In the Division of Trading and Markets, for questions concerning Form SBSE, Form SBSE–A, Form SBSE–BD, Form SBSE–C, Form SBSE–W, and Form 17–H, contact Kathy Bateman at (202) 551–4345; in the Division of Corporation Finance, for questions concerning Form C, contact Vik Sheth at (202) 551–3818; and in the Division of Economic and Risk Analysis, for questions concerning XBRL taxonomies, contact Walter Hamscher at (202) 551–5397.

SUPPLEMENTARY INFORMATION: We are adopting an updated EDGAR Filer Manual, Volume II. The Filer Manual describes the technical formatting requirements for the preparation and submission of electronic filings through the EDGAR system.[1] It also describes the requirements for filing using EDGARLink Online and the Online Forms/XML Web site.

The revisions to the Filer Manual reflect changes within Volume II entitled EDGAR Filer Manual, Volume II: "EDGAR Filing," Version 36 (April 2016). The updated manual will be incorporated by reference into the Code of Federal Regulations.

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[2] Filers may consult the Filer Manual in conjunction with our rules governing mandated electronic filing when preparing documents for electronic submission.[3]

The EDGAR system will be upgraded to Release 16.1 on April 25, 2016 and will introduce the following changes:

Pursuant to Section 15F of the Exchange Act and Rules 15Fb1–1 through 15Fb6–2 thereunder, Security-based Swap Dealers and Major Security-based Swap Participants will be able to electronically register, amend their registration and withdraw from their registration with the Commission using the following submission form types:

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[10] The Commission has rounded this figure from $571.55 to $570 for compliance clarity and simplicity.

[11] See 15 U.S.C. 57a(d)(2)(B); 16 CFR 1.15(b) (providing that non-substantive amendments to trade regulation rules are exempt from the rulemaking procedures of Section 18 of the FTC Act).

[12] 5 U.S.C. 553(b)(B) (providing that "good cause" exists to forego notice and comment when public comment is unnecessary).

[13] 5 U.S.C. 603 and 604 (no regulatory flexibility analyses required where the APA does not require public comment).

[1] We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33–6986 (April 1, 1993) [58 FR 18638]. We implemented the most recent update to the Filer Manual on December 14, 2015. See Release No. 33–9987 (January 4, 2016) [81 FR 3].

[2] See Rule 301 of Regulation S–T (17 CFR 232.301).

[3] See Release No. 33–9987 in which we implemented EDGAR Release 15.4. For additional history of Filer Manual rules, please see the cites therein.

- SBSE: Application for Registration of Security-based Swap Dealers and Major Security-based Swap Participants
- SBSE/A: Amendment to an Application for Registration of Security-based Swap Dealers and Major Security-based Swap Participants
- SBSE–A: Application for Registration of Security-based Swap Dealers and Major Security-based Swap Participants that are Registered or Registering with the Commodity Futures Trading Commission as a Swap Dealer or Major Swap Participant
- SBSE–A/A: Amendment to an Application for Registration of Security-based Swap Dealers and Major Security-based Swap Participants that are Registered or Registering with the Commodity Futures Trading Commission as a Swap Dealer or Major Swap Participant
- SBSE–BD: Application for Registration of Security-based Swap Dealers and Major Security-based Swap Participants that are Registered Broker-dealers
- SBSE–BD/A: Amendment to an Application for Registration of Security-based Swap Dealers and Major Security-based Swap Participants that are Registered Broker-dealers
- SBSE–C: Certifications for Registration of Security-based Swap Dealers and Major Security-based Swap Participants
- SBSE–W: Request for Withdrawal from Registration as Security-based Swap Dealer or Major Security-based Swap Participant

These submission form types can be accessed by clicking the "File SBSE" link on the EDGAR Filing Web site. Additionally, filers can construct XML submissions for SBSE, SBSE/A, SBSE–A, SBSE–A/A, SBSE–BD, SBSE–BD/A, SBSE–C, and SBSE–W by following the "EDGAR Form SBSE XML Technical Specification" document located on the SEC's Public Web site (*http://www.sec.gov/info/edgar.shtml*).

Pursuant to Exchange Act Rules 17h–1T and 17h–2T, broker-dealers that choose to file electronically will now submit the Risk Assessment Report for Brokers and Dealers Form 17–H via EDGAR using the following submission form types:

- 17HACON: Confidential broker dealer annual 17–H report
- 17HACON/A: Amendment for confidential broker dealer annual 17–H report
- 17HQCON: Confidential broker dealer quarterly 17–H report
- 17HQCON/A: Amendment for confidential broker dealer quarterly 17–H report

These submission form types can be accessed by clicking the "File 17–H" link on the EDGAR Filing Web site. Additionally, broker-dealers can construct XML submissions for 17HACON, 17HACON/A, 17HQCON, and 17HQCON/A by following the "EDGAR Form 17–H XML Technical Specification" document located on the SEC's Public Web site (*http://www.sec.gov/info/edgar.shtml*).

The "Current Number of Employees" field on the "Disclosure Requirements" screen of the Regulation Crowdfunding submission form types C, C/A, and C–U has been updated to permit a value of zero in addition to the currently allowable numeric values.

On March 7, 2016, the EDGAR system was upgraded to Release 16.0.3 and now supports the 2016 US GAAP, 2016 COUNTRY, 2016 CURRENCY and 2016 EXCH taxonomies. Please see *http://sec.gov/info/edgar/edgartaxonomies.shtml* for the complete listing of supported standard taxonomies.

Along with the adoption of the Filer Manual, we are amending Rule 301 of Regulation S–T to provide for the incorporation by reference into the Code of Federal Regulations of today's revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

The updated EDGAR Filer Manual will be available for Web site viewing and printing; the address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml*. You may also obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m.

Since the Filer Manual and the corresponding rule changes relate solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (APA).[4] It follows that the requirements of the Regulatory Flexibility Act[5] do not apply.

The effective date for the updated Filer Manual and the rule amendments is May 19, 2016. In accordance with the APA,[6] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system upgrade to Release 16.1 is scheduled to become available on April 25, 2016. The Commission believes that establishing an effective date less than 30 days after publication of these rules is necessary to coordinate the effectiveness of the updated Filer Manual with these system upgrades.

Statutory Basis

We are adopting the amendments to Regulation S–T under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[7] Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,[8] Section 319 of the Trust Indenture Act of 1939,[9] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[10]

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

Text of the Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for Part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

■ 2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the updated EDGAR Filer Manual, Volume I: "General Information," Version 24 (December 2015). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: "EDGAR Filing," Version 36 (April 2016). Additional provisions applicable to Form N–SAR filers are set forth in the EDGAR Filer Manual, Volume III: "N–

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[4] 5 U.S.C. 553(b).

[5] 5 U.S.C. 601–612.

[6] 5 U.S.C. 553(d)(3).

[7] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[8] 15 U.S.C. 78c, 78*l*, 78m, 78n, 78o, 78w, and 78*ll*.

[9] 15 U.S.C. 77sss.

[10] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

SAR Supplement," Version 5 (September 2015). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You must comply with these requirements in order for documents to be timely received and accepted. The EDGAR Filer Manual is available for Web site viewing and printing; the address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml*. You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. You can also inspect the document at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Dated: April 22, 2016.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2016–11764 Filed 5–18–16; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 7

[Docket No. FR–5645–F–01]

RIN 2501–AD78

Removal of the Equal Employment Opportunity; Policy, Procedures and Programs Regulation

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: To increase the effectiveness of its Equal Employment Opportunity (EEO) program and streamline HUD's regulations, HUD has decided to remove 24 CFR part 7 (HUD's EEO regulation), while continuing to publish its EEO policy and procedures as administrative guidance. This action is necessary because HUD's EEO regulation has been superseded by the Equal Employment Opportunity Commission (EEOC) regulation at 29 CFR part 1614 (EEOC's regulation) and therefore does not establish binding requirements. In addition, HUD's EEO regulation was intended to conform to and mirror EEOC's regulation. As EEOC's regulation has been revised, HUD's EEO regulation has become outdated and may create confusion for parties having to reconcile differing HUD and EEOC regulations. By consolidating its EEO policy and procedures in administrative guidance, HUD can more effectively incorporate amendments to EEOC's regulation, highlight HUD-specific guidance, and simplify the procedures for parties seeking to exercise their EEO rights.

DATES: *Effective:* June 20, 2016.

FOR FURTHER INFORMATION CONTACT: John P. Benison, Director, Office of Departmental Equal Employment Opportunity, Department of Housing and Urban Development, 451 7th Street SW., Room 2102, Washington, DC 20410; telephone number 202–708–3362 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

HUD policy is to provide equality of employment opportunity for all persons, and to prohibit discrimination because of race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age, disability, or genetic information in all facets of employment. These policies are integral to HUD's mission and underlie its efforts to promote economic and community development; increase homeownership; create affordable housing opportunities for low-income Americans; enforce the Nation's fair housing laws; and support the homeless, the elderly, people with disabilities, and people living with AIDS. Toward this goal, HUD remains committed to promoting affirmative employment through the removal of barriers and by positive actions at every management level, including the early resolution of EEO disputes.

To increase the effectiveness of HUD's EEO program and streamline HUD's regulations, HUD has decided to consolidate its EEO policy and procedure, currently codified in HUD's EEO regulation at 24 CFR part 7, in administrative guidance that is already posted on HUD's Web site. This action is necessary because HUD's EEO regulation has been superseded by EEOC regulation, and, as such, does not establish binding requirements. In addition, this action allows HUD to ensure that its EEO policy and procedures are accurate and up-to-date.

HUD's EEO regulation was promulgated on April 23, 2001 (66 FR 20564). When published, the rule was intended to mirror and conform to EEOC's "Federal Sector Equal Employment Opportunity" regulation at 29 CFR part 1614. Since promulgation of HUD's EEO Regulation, EEOC's regulation at 29 CFR part 1614 was revised several times: On May 21, 2002, to implement the amendment of section 501 of the Rehabilitation Act, under the Rehabilitation Act Amendments of 1992; on August 2, 2006, to address the posting requirements of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (71 FR 43644); on December 7, 2009, to include references to title II of the Genetic Information Nondiscrimination Act of 2008 (74 FR 63981); on July 25, 2012, to reform the Federal sector EEO complaint process (77 FR 43498); and on various other dates to implement clerical or procedural changes. As a result, HUD's EEO Regulation no longer mirrors EEOC's regulation and is now outdated. HUD is concerned that this may result in confusion for parties required to reconcile HUD's EEO regulation and EEOC's regulation. Further, the provisions of HUD's EEO regulation that expand on EEOC's regulation may add further confusion by adding procedures that apply only to HUD and not to those employees or applicants seeking information about Federal equal employment opportunity policies, procedures, and programs.

To remedy this situation, HUD is removing 24 CFR part 7. By removing HUD's EEO regulation and consolidating all of HUD's EEO policy and procedures in administrative guidance, HUD can more effectively incorporate amendments to EEOC's regulation, highlight HUD specific guidance, and simplify the procedures for parties seeking to exercise their EEO rights.

HUD consulted with the EEOC in development of this final rule, consistent with "Executive Order 12067—Providing for Coordination of Federal Equal Employment Opportunity programs" (43 FR 28967). Executive Order 12067 requires that "agencies shall advise and offer to consult with the Equal Employment Opportunity Commission during the development of any proposed rules, regulations, policies, procedures or orders concerning equal employment opportunity."

II. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1; *see also* 5 U.S.C. 553(b)). HUD finds that public notice and comment are unnecessary for this rulemaking because HUD's EEO regulation is obsolete and unnecessary, and, as such, its removal does not establish or affect substantive policy. HUD's EEO regulation was initially promulgated to mirror and conform to EEOC's regulation, but was later effectively superseded as EEOC revised its regulations. For the sake of accuracy and flexibility, HUD will address in administrative guidance, rather than in the Code of Federal Regulations, any future changes to its internal EEO policy and procedures. Additionally, this will eliminate confusion resulting from having two regulations that address the same EEO laws yet differ in currency and scope.

For these reasons, HUD has determined that it is unnecessary to delay the effectiveness of this rule in order to solicit prior public comment.

III. Findings and Certification

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

Since this final rule covers internal HUD operations and pertains only to current/former employees and applicants for employment at HUD, it is not subject to review under Executive Order 12866. As discussed in this preamble, the final rule would amend HUD's personnel regulations by removing HUD's EEO regulation that, when issued, was established to conform to the EEOC's regulation but is now outdated. HUD is consolidating its EEO policy and guidance in administrative guidance, allowing HUD more flexibility to effectively incorporate amendments to EEOC's regulation and simplify procedures for parties seeking to exercise their EEO rights. This final rule is, nevertheless, consistent with the goals of Executive Order 13563, to reduce regulatory burdens and maintain maximum agency flexibility.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because HUD has determined that good cause exists to issue this rule without prior public comment, this rule is not subject to the requirement to publish an initial or final regulatory flexibility analysis under the RFA as part of such action.

Unfunded Mandates Reform

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA)[1] requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of UMRA also requires an agency to identity and consider a reasonable number of regulatory alternatives before promulgating a rule.[2] However, the UMRA applies only to rules for which an agency publishes a general notice of proposed rulemaking. As discussed above, HUD has determined, for good cause, that prior notice and public comment is not required on this rule and, therefore, the UMRA does not apply to this final rule.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This rule will not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Environmental Review

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

List of Subjects in 24 CFR Part 7

Administrative practice and procedure, Equal employment opportunity, Organization and functions (Government agencies).

PART 7—[REMOVED]

■ Accordingly, under 42 U.S.C. 3535(d) and as discussed in the preamble, the Department of Housing and Urban Development is amending 24 CFR by removing part 7.

Dated: May 12, 2016.

Nani A. Coloretti,

Secretary.

[FR Doc. 2016–11806 Filed 5–18–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG 2016–0321]

RIN 1625–AA00

Safety Zone; Sabine River, Orange, Texas

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for waters of the Sabine River, shoreline to shoreline, adjacent to the public boat ramp located in Orange, TX. This safety

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[1] 2 U.S.C. 1532.

[2] 2 U.S.C. 1534.

zone is necessary to protect persons and vessels from hazards associated with a high speed boat race competition. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, Port Arthur.

DATES: This rule is effective from 8:30 a.m. on May 21, 2016, through 6 p.m. on May 22, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0321 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Scott Whalen, Marine Safety Unit Port Arthur, U.S. Coast Guard; telephone 409–719–5086, email *Scott.K.Whalen@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. The Coast Guard received notice on March 30, 2016 that this boat racing event is scheduled to take place on May 21 and 22, 2016. Upon full review of the event details, the Coast Guard determined that additional safety measures are necessary due to potential navigational hazards present during the high speed boat race. It is impractical to publish a NPRM because a safety zone needs to be established by May 21, 2016.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because regulatory action is necessary to limit access to the area of the high speed boat races, protect participants, spectators, and other persons and vessels from the potential hazards during a high speed boat race on a navigable waterway. The Coast Guard will notify the public and maritime community that the safety zone will be in effect and of its enforcement periods via broadcast notices to mariners (BNM) and the event will advertised in the Local Notice to Mariners (LNM).

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port, Port Arthur (COTP) has determined that the potential hazards associated with high speed boat races are a safety concern for vessels operating on the Sabine River. This rule is needed to protect participants, spectators, and other persons and vessels in the navigable waters within the safety zone during the scheduled races.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 8:30 a.m. on May 21, 2016 through 6:00 p.m. on May 22, 2016. The safety zone covers all navigable waters of the Sabine River, shoreline to shoreline, adjacent to the public boat ramp located in Orange, TX. The northern boundary is from the end of Navy Pier One then easterly to the river's eastern shore. The southern boundary is a line shoreline to shoreline. The duration of the safety zone is intended to protect participants, spectators, and other persons and vessels, in the navigable waters of the Sabine River during the high speed boat races. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, and duration of the safety zone. This safety zone is over a 2-day period and enforcement during the effective times, enforcement periods will include scheduled breaks, providing opportunity for vessels to transit through the affected area. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessel to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on vessel owners or operators.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone during a 2-day period that will prohibit entry within the zone without permission of the Captain of the Port. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T08–0321 to read as follows:

§ 165.T08–0321 Safety Zone; Sabine River, Orange, Texas.

Location. The following area is a safety zone: Waters of the Sabine River, shoreline to shoreline, adjacent to the Orange public boat ramps located in Orange, TX. The northern boundary is from the end of old Navy Pier One at 30°05′50″ N. 93°43′15″ W. then easterly to the river's eastern shore. The southern boundary is a line shoreline to shoreline at latitude 30°05′33″ N. (NAD83).

(a) *Effective Periods.* This rule is effective from 8:30 a.m. on May 21, 2016 through 6:00 p.m. on May 22, 2016. Enforcement during the effective periods will allow for scheduled breaks allowing vessels to pass through the safety zone. Notice of scheduled breaks will be provided as indicated under (d) Informational broadcasts.

(b) *Regulations.* (1) Under the general safety zone regulations in § 165.23 of this part, entry into this zone is prohibited to all persons and vessels except those vessels specifically authorized by the Captain of the Port, Port Arthur or a designated representative.

(2) Persons or vessels requiring entry into or passage through must request permission from the Captain of the Port, Port Arthur, or a designated representative. They may be contacted on VHF–FM channel 13 or 16, or by phone at by telephone at 409–719–5070.

(3) All persons and vessels shall comply with the lawful orders or directions given to them by the Captain of the Port, Port Arthur or the Captain of the Port's designated representative. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(c) *Information broadcasts.* The Coast Guard will inform the public through broadcast notices to mariners of channel restrictions and Vessel Traffic Service advisories on VHF–FM channel 65A.

Dated: April 15, 2016.

R.S. Ogrydziak,

Captain, U.S. Coast Guard, Captain of the Port, Port Arthur, Texas.

[FR Doc. 2016–11821 Filed 5–18–16; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 370

[Docket No. RM 2008–7]

Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges are amending a Copyright Royalty Board rule regarding reporting requirements for certain Educational Stations that pay no more than the minimum fee for their use of sound recordings under the applicable statutory licenses.

DATES: Effective May 19, 2016.

FOR FURTHER INFORMATION CONTACT: Kimberly Whittle at (202) 707–7658 or at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

On May 2, 2014, the Copyright Royalty Judges (Judges) published a document in the **Federal Register** seeking comments on two unrelated rulemaking proposals (Proposal).[1] For the proposal that is the subject of this document the Judges requested comments on a proposed rule amendment to relax certain reporting requirements for educational stations that pay no more than the minimum fee for the use of sound recordings under the statutory licenses in Sections 112(e) and 114 of the Copyright Act. The Judges received over twenty comments on the proposal, most of which supported it. For the reasons discussed below, the Judges adopt the proposed amendment.

Background

On October 28, 2009, College Broadcasters, Inc. (CBI), American Council on Education (ACE), and Intercollegiate Broadcasting System, Inc. (IBS) (collectively, "Petitioners") filed a motion with the Judges seeking clarification of an issue purportedly raised by final regulations that the Judges adopted regarding reporting requirements for entities that digitally transmit sound recordings pursuant to section 114(d)(2) of the Copyright Act or that make ephemeral phonorecords of sound recordings pursuant to section 112(e) of that Act.[2] *Joint Petition for Clarification, Notice and Recordkeeping for Use of Sound Recordings Under the Statutory License,* Docket No. RM 2008–7 (Oct. 28, 2009) (Joint Petition). The regulations at issue are found in 37 CFR 370.4, and they prescribe rules for the maintenance and delivery of reports of use (ROUs).[3]

For nonsubscription transmission services, except those qualifying as minimum fee broadcasters, the ROU must include the actual total performances of each sound recording during the reporting period. 37 CFR 370.4(d)(2)(vi). Minimum fee broadcasters, however, may report, as an alternative to actual total performances, the aggregate tuning hours, the channel or program name, and play frequency. 37 CFR 370.4(d)(2)(vii).

Whereas most services must prepare an ROU for each calendar month of the year, a minimum fee broadcaster need only prepare an ROU for a two-week period for each calendar quarter of the year. 37 CFR 370.4(d)(3).[4] However, the regulations exempt minimum-fee broadcasters from the census reporting requirement (*i.e.,* the requirement to report actual total performances) only if their stations are licensed by the Federal Communications Commission (FCC) because the FCC licensing is part of the definition of "broadcaster." Petitioners asked that the Judges "clarify" that the regulations also exempt minimum-fee broadcasters that are not FCC-licensed broadcasters if they are "educational" in nature. Joint Petition at 2–4.

After reviewing the Joint Petition, the Judges concluded that Petitioners were not seeking a clarification of the final regulations but rather were seeking a substantive change. In other words, the "clarification" that the Petitioners sought actually amounted to a request to amend the census reporting requirement regulations to exempt non-FCC-licensed minimum-fee *educational webcasters.* The Judges thus determined that Petitioners' petition for clarification should be treated as a petition for rulemaking and made the Joint Petition subject to notice and public comment.[5]

On May 2, 2014, the Judges published the Proposal in the **Federal Register** seeking comments on the Petitioners' proposal.[6] The Judges requested comments on not only the Petitioners' principal proposal, which would exempt non-FCC-licensed minimum fee educational webcasters from the census reporting requirement, but also on a broader alternative proposal that Petitioners proffered that would expand the census reporting exemption to entities that are noncommercial webcasters but that would not be considered educational entities under the Petitioners' proposal.

In response to the Proposal, the Judges received approximately twenty-four comments.[7] No commenter opposed the Petitioners' proposal for educational webcasters. SoundExchange did, however, oppose Petitioners' broader alternative proposal to exclude from the census reporting requirements noneducational noncommercial webcasters. As discussed below, the Judges are adopting the Petitioners' proposed exemption for non-FCC-licensed educational broadcasters, but are not adopting the broader noncommercial webcaster exemption.

Petitioners' Rule Proposal

Petitioners propose that the definition of a "minimum fee broadcaster" in 37 CFR 370.4(b)(3) be amended to include a nonsubscription service that: (1) Is directly operated by, or affiliated with and officially sanctioned by a domestically accredited primary or secondary school, college, university, or other post-secondary degree-granting educational institution; and (2) the digital audio transmission operations of which are, during the course of the year, staffed substantially by students enrolled in such institution; and (3) is not a "public broadcasting entity" (as defined in 17 U.S.C. 118(g)) qualified to receive funding from the Corporation for Public Broadcasting (CPB) pursuant to the criteria set forth in 47 U.S.C. 396; and (4) is exempt from taxation under section 501 of the Internal Revenue Code, has applied for such exemption, or is operated by a State or possession or any governmental entity or subordinate thereof, or by the United States or District of Columbia, for exclusively public purposes. *Joint Petition* at 2 n.1. While the proposed language upon which the Judges requested comments did not incorporate CBI's singular reference to "Educational Stations," the proposal retained the substance of the Petitioners' proposal.

In the Proposal soliciting comment on the proposal, in addition to seeking comments on the proposal generally, the Judges also sought comments on certain specific issues. In particular, the Judges sought comment on how unlicensed minimum fee "Educational Stations," as that term would be defined in Petitioners' proposal, have been reporting under the current regulations. The Judges also asked whether any such entities have ceased operations, as predicted by Petitioners and if so, how many. If none ceased operations, the Judges asked whether the need still exists for Petitioners' proposed amendment. The Judges also asked whether Petitioners have, in the first instance, made their case persuasively that the proposed amendment is warranted. If the change is warranted, the Judges asked whether they should adopt (1) Petitioners' preferred definition, which applies only to Educational Stations, or (2) the broader, alternate definition.[8]

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[1] *See* 79 FR 25038. The Judges continue to analyze the second rulemaking proposal, submitted by SoundExchange, Inc., and the comments responsive thereto.

[2] The release adopting the regulations appeared in 74 FR 52418 (Oct. 13, 2009). The applicable rules are codified in 37 CFR part 370.

[3] An ROU is a report required to be provided by an entity that transmits sound recordings pursuant to the statutory licenses in section 114(d)(2) or that makes ephemeral recordings of sound recordings pursuant to section 112(e) of the Copyright Act. 37 CFR 370.1(i). ROUs must be delivered to the Collective designated by the Judges (currently SoundExchange, Inc.). *See, e.g.,* 37 CFR 370.4(c). ROUs must include the name of the entity making the transmissions, a category transmission code, the featured artist of the sound recording, and the sound recording title, among other information. The current proceeding is focused only on the reporting requirements of "nonsubscription transmission services," which are entities that provide audio programming consisting of performances of sound recordings. *See* 37 CFR 370.1(e). Such services are often referred to as webcasters.

[4] The weeks need not be consecutive but both must be completely within the calendar quarter. 37 CFR 370.4(d)(3)(ii).

[5] 79 FR at 25039.

[6] 79 FR 25038. In the interest of administrative efficiency, the Judges also sought comments in the same notice on an unrelated petition for rulemaking that SoundExchange submitted. SoundExchange's proposal, which requested a broad range of changes to CRB rules, is still pending. The current release addresses only the census reporting requirement proposal submitted by the Petitioners.

[7] The Judges received comments that addressed in some fashion the Petitioners' proposal from the following: All-Campus Radio Network (ACRN), Andrea Baker, CBI, IBS, KBCU–FM, KBHU–FM, KNHC, KSSU, KUIW, KWSC–FM, KXUL, Lasell College Radio, the National Association of Broadcasters and Radio Music License Committee (NAB/RMLC), NPR, SCAD Atlanta Radio, SoundExchange, WBSU, WGSU–FM, WJCU, WKNC–FM, WRFL–FM, WSDP–FM, WSLX, and WSOU–FM (Seton Hall University).

Comment Summary

Of the 24 comments the Judges reviewed, none opposed the specific language included in the Proposal, although, as discussed below, SoundExchange opposed adopting a more expansive exemption from the census reporting requirements for noncommercial webcasters that are not affiliated with an educational organization.

All-Campus Radio Network's (ACRN) comment is illustrative of those that supported the proposal. Because it has no FCC license, ACRN cannot qualify as a "minimum fee broadcaster" under 37 CFR 370.4(b)(3).[9] ACRN is, however, a Noncommercial Educational Webcaster (NEW) as defined in 37 CFR 380.21.[10] As such, ACRN has a reporting waiver under 37 CFR 380.23(c) and (g)(1), which authorizes payment to the Collective of a $100 proxy fee in lieu of maintaining and delivering ROUs. ACRN would like to continue to report as a NEW indefinitely.[11] In the alternative, ACRN supports the proposal to change 37 CFR 370.4(b)(2) so that ACRN would qualify as a minimum fee broadcaster.[12] It views this option as less desirable, however.

KBCU–FM, KBHU, KNHC, KSSU, KWSC–FM, and KXUL all generally concurred with the position of ACRN. KUIW and Lasell College Radio, which also support the proposal, state that they would probably have to cease broadcasting if the reporting provision for NEWs were to expire and they could not qualify as minimum fee broadcasters.[13]

CBI supports continuing the reporting requirements in § 380.23, which were negotiated as part of a settlement with SoundExchange, because, according to CBI, those requirements are simpler to follow and impose fewer obstacles than the rules with which non-NEWS must comply. *CBI Comment* at 5. CBI states that it conducted a survey and determined that fewer than 13% of non-FCC-licensed stations are currently able to report actual total performance (ATP) data. According to CBI, fewer than 18% of those stations reported that they would be able to find a means to comply with full census ATP reporting should the requirements in § 380.23 be allowed to expire and the proposed regulations in the Joint Petition not be adopted.[14]

Neither CBI nor any other commenter provided data on any non-licensed entity that ceased operation due to the ROU reporting requirement. That being said, the great majority of commenters that are subject to the ROU reporting requirement appear to be paying the $100 proxy fee in lieu of reporting (an alternative that is now available through 2020). *See Determination (final), Determination of Royalty Rates and Terms for Ephemeral Recording and Webcasting Digital Performance of Sound Recordings (Web–IV),* Docket No. 14–CRB–0001–WR (2016–2020) (Mar. 2, 2016).

Not surprisingly, IBS also supports its Joint Petition. IBS adds that it agrees with SoundExchange's position that NEWs with fewer than 55,000 aggregate tuning hours (ATH) per month should be permitted to pay an annual $100 proxy fee in lieu of census reporting. IBS also contends that NEWs with fewer than 15,914 ATH monthly should pay a $50 proxy fee and NEWS with fewer than 6,365 ATH monthly should pay a $20 proxy fee. IBS believes that each of these categories should be exempt from the $500 annual minimum fee. *Reply Comments of IBS* at 1. Because IBS made its suggestions in Reply Comments, the Judges were unable to include them in the Proposal, and therefore have no basis upon which to adopt them.

The National Association of Broadcasters (NAB) and the Radio Music License Committee (RMLC) advocate an exemption from all reporting requirements for broadcasters that currently pay the minimum fee of $500. They contend that many of these entities are already exempt from reporting requirements as long as they pay the $100 annual proxy fee (*i.e.*, small broadcasters that stream no more than 27,777 aggregate tuning hours (ATH) and noncommercial educational webcasters that stream less than 55,000 annual ATH). Moreover, according to NAB, most of these entities play "mainstream" music that larger broadcasters play so the allocations of royalties paid by these entities could be made based on playlist data collected from larger broadcasters. *NAB/RMLC Comment* at 51–52.

According to National Public Radio, Inc. (NPR), the current recordkeeping and reporting system is the result of a settlement agreement between SoundExchange and the CPB. NPR estimates that about 402 stations operate under the agreement. *NPR Comment* at 7. NPR notes that it aggregates the reports of each of these stations and reports directly to SoundExchange on behalf of all the stations. NPR states that it currently operates under the settlement agreement with SoundExchange, and, as a result, it is not subject to certain of the reporting and recordkeeping requirements in the regulations. NPR believes, however, that the regulations should be flexible to allow parties that are not parties to agreements to be able to use the license in a manner that is not overly burdensome. *NPR Comment* at 1–3.

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[8] 79 FR at 25040.

[9] Section 370.4(b)(3) states that a *minimum fee broadcaster* is a nonsubscription service that meets the definition of a broadcaster pursuant to § 380.2(b) and the service's payments for eligible transmissions do not exceed the annual minimum fee established for licensees relying upon the statutory licenses set forth in 17 U.S.C. 112 and 114. At the time of the motion for clarification 37 CFR 380.2 defined a broadcaster as a type of Licensee that owns and operates a terrestrial AM or FM radio station that is licensed by the Federal Communications Commission.

[10] Under § 380.21, a NEW is a noncommercial webcaster (as defined in 17 U.S.C. 114(f)(5)(E)(i)) that has obtained a compulsory license, complies with all applicable provisions of the license, is operated by or affiliated with and sanctioned by a primary or secondary school, college or university or other degree-granting educational institution, and is not a public broadcasting entity qualified to receive funding from the CPB. 17 CFR 380.21. As part of the supporting regulations for the Section 112 and 114 webcasting licenses, § 380.21, by its terms, expires at the end of each licensing period (currently December 31, 2020). *See* 37 CFR 380.20(a). The most recent iteration of § 380.21, which was adopted after comments in the current rulemaking proceeding were filed, includes an additional requirement that the noncommercial webcaster take affirmative steps not to make total transmissions in excess of 159,140 Aggregate Tuning Hours on any individual channel or station in any month, if in any previous calendar year it has made total transmissions in excess of 159,140 Aggregate Tuning Hours on any individual channel or station in any month. 37 CFR 380.21 (2015).

[11] As part of the supporting regulations for the webcasting licenses, the reporting waiver expires every five years, unless it is renewed.

[12] ACRN states that the proposed changes are "warranted *only* if the alternative to report under 380.23 were to not sunset [sic]." *ACRN Comment* at 3, emphasis in original. Read in the context of the ACRN letter as a whole, it appears that ACRN meant that the proposed changes would be warranted only if the alternative to report under 380.23 *were* to sunset.

[13] KUIW Comment at 1–2. Lasell Comment at 1–2. Each commenter recommends that the reporting requirements applicable to NEWs be made permanent. Such a recommendation is beyond the scope of the proposal upon which the Judges sought comment in the current proceeding. As such, the Judges do not have adequate support in the record to support adopting such a proposal.

[14] Andrea Baker supports applying the Petitioner's preferred definition of "minimum fee broadcaster" because, according to Ms. Baker, the proposal is more likely to move users of sound recordings away from reporting of sampled data. The proposal would in fact allow *more* users to choose to report sampled data. Through 2020, however, to the extent they qualify to pay the proxy fee in lieu of reporting, the users that would benefit from the proposal are not reporting any sound recording play data.

SCAD Atlanta Radio[15] is a NEW under 37 CFR 380.21. It is a web-only, student-run station and does not have an FCC license so it cannot qualify as a minimum fee broadcaster under 37 CFR 370.4(b)(3). As a NEW, SCAD Atlanta pays the proxy fee in lieu of reporting, as permitted under 37 CFR 380.23. It would like to continue to report that way and therefore requests that the sunset provisions in the regulations be removed. In the alternative, SCAD Atlanta supports the proposed change to 37 CFR 370.4(b)(2), which would qualify SCAD Atlanta as a minimum fee broadcaster if the NEW designation sunsets. SCAD Atlanta states that if it lost the ability to report as a NEW and was forced to report monthly census data, the station would face considerable hardship and expense. *SCAD Atlanta Comment* at 2.

In its initial comment, SoundExchange stated that the Joint Petition is moot through 2015 (and now presumably through 2020). According to SoundExchange, pursuant to 37 CFR 380.23(g)(2), a NEW with usage at a level covered by the minimum fee is currently permitted to provide ROUs on a sample basis as contemplated by proposed § 370.4(b)(2) and is even excused from reporting its ATH. *SoundExchange Comment* at 3. SoundExchange notes that such services report play frequency in lieu of reporting ATH or actual total performances.

SoundExchange states that the vast majority of NEWs are not even required to provide sample ROUs. SoundExchange states that, pursuant to 37 CFR 380.23(g)(1), NEWs with the lowest intensity of usage may elect to pay a proxy fee of $100 and forgo providing ROUs altogether. According to SoundExchange, for 2013, 97% of NEWs elected this reporting waiver and were not required to provide any ROUs. As a result of the *Web–IV* Determination, § 380.23(g)(1) and (2) remain in effect through 2020, at which point the Judges will determine rates and terms for the next rate period (2021–2025) (*Web-V*).

Nevertheless, SoundExchange does not oppose the Petitioners' proposed definition of "Minimum Fee Broadcaster" for § 370.4(b)(2). SoundExchange highlights certain technical errors in the proposal (*i.e.,* SoundExchange opines that there should be a comma following the phrase "officially sanctioned by" in § 370.4(b)(2)(ii) and the reference in proposed § 370.4(b)(2)(iv) should be Section 118(f) (rather than 118(g)).[16] SoundExchange also recommends changing the proposed term from "Minimum Fee Broadcaster" to "Eligible Minimum Fee Webcaster" (or the like) to more accurately reflect the fact that certain of the services covered are not broadcasters. *SoundExchange Comment* at n.2.[17] According to SoundExchange, adoption of this proposal "seems like a reasonable deviation from the important principle of census reporting." *SoundExchange Comment* at 4.

SoundExchange does not support the broader alternative proposal to include internet-only noncommercial webcasters that are not educational webcasters (which are not currently covered by § 380.23(g)(2)). For such webcasters, if they are staffed by professionals or use modern content management technology capable of readily generated ROUs on a census basis, they should not be exempted from census reporting just because they are low-intensity noncommercial users. SoundExchange does not believe that the Petitioners have made the case for a broader exemption. *SoundExchange Comment* at 4.

While SoundExchange is not opposed to the narrow proposed definition of Minimum Fee Broadcaster in § 370.4(b) (with the technical corrections discussed above), SoundExchange notes that "NEWs would like to include in the notice and recordkeeping regulations the outright reporting waiver and play frequency reporting provisions of Section 380.23(g), but not the late fee for ROUs provided in Section 380.23(e) or the server log retention provisions of Section 380.23(i)." *SoundExchange Reply Comments* at 7. SoundExchange does not believe that NEWs should be given their requested "special exemption" in these regulations because, according to SoundExchange, "their concerns are addressed directly in the terms to which CBI agreed." *SoundExchange Reply Comments* at 8.

SoundExchange does not believe it is fair for NEWs to pick and choose their favorite provisions from § 380.23 that were negotiated by CBI. SoundExchange notes that the agreement to settle the *Web IV* proceeding as to NEWs on a basis that would generally extend the relevant provisions of § 380.23 moots the issues raised in the Joint Petition through 2020. Anticipating the adoption of such agreement, which the Judges adopted during the *Web IV* proceeding, SoundExchange found no reason for the Judges to adopt the proposals in the NPRM based on the Joint Petition. SoundExchange speculates that under such a scenario, the Judges could revisit the question of reporting by NEWs based on a fresh record in five years. Otherwise, SoundExchange recommends that the Judges either adopt the equivalent of all the relevant provisions of § 380.23 (*i.e.,* the proposed late fee for ROUs and proposed recordkeeping provisions) or adopt only the changes to the definition of Minimum Fee Broadcaster proposed in the NPRM. *SoundExchange Reply Comments* at 9.

SoundExchange Settlement With CBI

In the context of the *Web IV* proceeding, the Judges were presented with two settlements that bear on the reporting requirements at issue in this rulemaking.[18] In one settlement, SoundExchange and CBI requested that the Judges adopt their agreement as a partial settlement of rates and terms under Section 112(e) and 114 of the Copyright Act (Act) for eligible nonsubscription transmissions by NEWs over the internet, and related ephemeral recordings. In the **Federal Register** document adopting the SoundExchange/CBI settlement, the Judges noted:

> Commercial webcasters are required to make detailed, census reports of all sound recordings they transmit. NEWs with limited listenership may pay the Collective a proxy fee to avoid the burden of census

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[15] SCAD Atlanta states that the station is produced by students at the Atlanta location of the Savannah College of Art and Design. The Judges also received a substantially identical comment from "SCAD Radio," which states that the station is produced by students at the Savannah location of the Savannah College of Art and Design.

[16] The Judges adopted these technical corrections in the final regulation.

[17] The Judges believe that the term "eligible minimum fee webcaster" more accurately reflects the fact that some of the entities covered by the definition would not satisfy the applicable definition of broadcaster and therefore accept SoundExchange's suggestion in the adopted regulation.

[18] *See* 80 FR 58201 (Sept. 28, 2015) (adopting proposed settlement between SoundExchange and CBI) and 80 FR 59588 (Oct. 2, 2015) (adopting proposed settlement between SoundExchange and NPR and the CPB).

> reporting. . . . A NEW electing the reporting waiver in 37 CFR 380.23(g)(1) must pay a $100 annual proxy fee to the Collective. Proposed Rule 37 CFR 380.22(a).[19]

In adopting the SoundExchange/CBI Settlement, the Judges noted the relevance of the Settlement to the current rulemaking proceeding:

> Many if not most of the comments responsive to the proposed recordkeeping provisions were filed by NEWs that apparently would qualify under the proposed Settlement to pay the proxy fee *in lieu* of census reporting in the upcoming license period. Extension until December 31, 2020, of the proxy fee *in lieu* of census reporting does not, however, address the precise issue raised in that rulemaking proceeding. The Judges shall address this issue along with a number of other issues relating to Part 370 in a separate publication focused directly on the May 2, 2014, Notice of Proposed Rulemaking.[20]

In other words, although the SoundExchange/CBI settlement provided a means for qualifying NEWs to pay a $100 proxy fee in lieu of census reporting through December 31, 2020, it does not, as the current proposal would, provide a permanent means for entities that meet the proposed definition of noncommercial educational webcasters to pay the proxy fee in lieu of census reporting. In light of the overwhelming support in favor of such a reporting waiver and the lack of opposition, the Judges find that adopting the proposed alternative for a permanent exemption from census reporting requirements is beneficial and consistent with the Copyright Act.

Given their adoption of the proposed exemption, the Judges decline to adopt a broader alternative proposed by Petitioners. Notwithstanding the unique stature of NEWs as noncommercial entities with an educational mission, the Judges do not believe extending the exemption to other noncommercial webcasters would be consistent with the policy intended to ease reporting obligations on NEWs. As discussed by some of the commenters, NEWs are often student-operated stations. The students generally perform station operations to supplement their academic pursuits during a given academic term. As a rule, with semester and summer breaks, the stations lack operational continuity.

Without a paid administrative staff and adequate financial and technological support, census reporting would present a significant challenge for those stations that could cause the educational institution to discontinue the stations to avoid the administrative burdens. Neither the students, the educational entity, nor the artists would benefit from elimination of the campus stations. The Judges agree with SoundExchange, however, that noncommercial noneducational webcasters have not made the case that they face the same challenges. Therefore, the Judges decline to extend the reporting requirement exemption to noncommercial webcasters that do not have the requisite affiliation with an educational institution.

SoundExchange contends that in light of the agreements SoundExchange, CPB, CBI, and NPR reached during the *Web IV* proceeding, which the Judges adopted, the current rulemaking is moot, at least through 2020. While the Judges agree that many webcasters that are eligible for either of the agreements will choose to pay the proxy fee in lieu of reporting, each such agreement has conditions and limitations that would not apply with respect to the proposal the Judges adopt today. Moreover, by adopting the proposal in the Petition as a permanent rule, the Judges provide certainty that, even if the current agreements are not extended in subsequent rate periods, eligible noncommercial educational webcasters will be able to avail themselves of the reduced reporting requirements in § 370.4, regardless of whether they are licensed with the FCC. Such certainty is sufficient justification for adopting the proposal.

Final Regulations

In consideration of the foregoing, the Copyright Royalty Judges amend 37 CFR part 370 as follows:

PART 370—NOTICE AND RECORDKEEPING REQUIREMENTS FOR STATUTORY LICENSES

■ 1. The authority citation for part 370 continues to read as follows:

Authority: 17 U.S.C. 112(e)(4), 114(f)(4)(A).

■ 2. Revise § 370.4(a) and (b) to read as follows:

§ 370.4 Reports of use of sound recordings under statutory license for nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services and business establishment services.

(a) *General.* This section prescribes rules for the maintenance and delivery of Reports of Use of sound recordings under section 112(e) or section 114 of title 17 of the United States Code, or both, by nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services, and business establishment services.

(b) *Definitions.* For purposes of this section, the following definitions apply:

Aggregate Tuning Hours means the total hours of programming that a nonsubscription transmission service, preexisting satellite digital audio radio service, new subscription service or business establishment service has transmitted during the reporting period identified in paragraph (d)(3) of this section to all listeners within the United States over the relevant channels or stations, and from any archived programs, that provide audio programming consisting, in whole or in part, of eligible nonsubscription service, preexisting satellite digital audio radio service, new subscription service or business establishment service transmissions, less the actual running time of any sound recordings for which the service has obtained direct licenses apart from 17 U.S.C. 114(d)(2) or which do not require a license under United States copyright law. For example, if a nonsubscription transmission service transmitted one hour of programming to 10 simultaneous listeners, the nonsubscription transmission service's Aggregate Tuning Hours would equal 10. If 3 minutes of that hour consisted of transmission of a directly licensed recording, the nonsubscription transmission service's Aggregate Tuning Hours would equal 9 hours and 30 minutes. If one listener listened to the transmission of a nonsubscription transmission service for 10 hours (and none of the recordings transmitted during that time was directly licensed), the nonsubscription transmission service's Aggregate Tuning Hours would equal 10.

AM/FM Webcast means a transmission made by an entity that transmits an AM/FM broadcast signal over a digital communications network such as the Internet, regardless of whether the transmission is made by the broadcaster that originates the AM/FM signal or by a third party, provided that such transmission meets the applicable requirements of the statutory license set forth in 17 U.S.C. 114(d)(2).

Broadcaster means an entity that:

(i) Has a substantial business owning and operating one or more terrestrial AM or FM radio stations that are licensed as such by the Federal Communications Commission;

(ii) Has obtained a compulsory license under 17 U.S.C. 112(e) and 114 and the implementing regulations therefor to make Eligible Transmissions and related ephemeral recordings;

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[19] 80 FR at 58201.

[20] 80 FR 58201, 58205 (Sept. 28, 2015).

(iii) Complies with all applicable provisions of Sections 112(e) and 114 and applicable regulations; and

(iv) Is not a noncommercial webcaster as defined in 17 U.S.C. 114(f)(5)(E)(i).

Eligible Minimum Fee Webcaster means a nonsubscription transmission service whose payments for eligible transmissions do not exceed the annual minimum fee established for licensees relying upon the statutory licenses set forth in 17 U.S.C. 112(e) and 114; and either:

(i) Meets the definition of a broadcaster; or

(ii) Is directly operated by, or affiliated with and officially sanctioned by, a domestically accredited primary or secondary school, college, university or other post-secondary degree-granting educational institution; and

(A) The digital audio transmission operations of which are, during the course of the year, staffed substantially by students enrolled in such institution; and

(B) Is not a "public broadcasting entity" (as defined in 17 U.S.C. 118(f)) qualified to receive funding from the Corporation for Public Broadcasting pursuant to the criteria set forth in 47 U.S.C. 396; and

(C) Is exempt from taxation under section 501 of the Internal Revenue Code, has applied for such exemption, or is operated by a State or possession or any governmental entity or subordinate thereof, or by the United States or District of Columbia, for exclusively public purposes.

Minimum fee broadcaster means a nonsubscription service that meets the definition of a broadcaster and the service's payments for eligible transmissions do not exceed the annual minimum fee established for licensees relying upon the statutory licenses set forth in 17 U.S.C. 112 and 114.

Performance means each instance in which any portion of a sound recording is publicly performed to a Listener by means of a digital audio transmission or retransmission (*e.g.,* the delivery of any portion of a single track from a compact disc to one Listener) but excluding the following:

(i) A performance of a sound recording that does not require a license (*e.g.,* the sound recording is not copyrighted);

(ii) A performance of a sound recording for which the service has previously obtained a license from the Copyright Owner of such sound recording; and

(iii) An incidental performance that both:

(A) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events; and

(B) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

Play frequency means the number of times a sound recording is publicly performed by a Service during the relevant period, without respect to the number of listeners receiving the sound recording. If a particular sound recording is transmitted to listeners on a particular channel or program only once during the reporting period, then the play frequency is one. If the sound recording is transmitted 10 times during the reporting period, then the play frequency is 10.

* * * * *

Dated: May 10, 2016.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

Approved by:

David S. Mao,

Acting Librarian of Congress.

[FR Doc. 2016–11746 Filed 5–18–16; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2015–0353; FRL–9946–49–Region 10]

Approval and Promulgation of Implementation Plans; Alaska: Updates to Incorporation by Reference and Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving, and incorporating by reference, State Implementation Plan revisions submitted by Alaska on May 12, 2015. The revisions updated the incorporation by reference of certain Federal provisions, revised rules to reflect changes to Federal permitting requirements and the 2013 redesignation of the Mendenhall Valley area of Juneau, and made minor clarifications to Alaska air quality rules. We note that the May 12, 2015 submission also included transportation conformity and infrastructure requirements. These requirements are not being addressed in this action. We approved the transportation conformity revisions in a previous action on September 8, 2015, and we intend to address the infrastructure requirements in a separate, future action.

DATES: This final rule is effective on June 20, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA–R10–OAR–2015–0353. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics, AWT–150, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at (206) 553–6357, *hall.kristin@epa.gov,* or by using the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, it is intended to refer to the EPA.

Table of Contents

I. Background
II. Final Action
III. Incorporation by Reference
IV. Statutory and Executive Order Reviews

I. Background

On May 12, 2015, Alaska submitted revisions to the Alaska SIP. On March 4, 2016, the EPA proposed to approve specific revisions in the submission (81 FR 11497). Please see our proposed rulemaking for further explanation and the basis for our finding. The public comment period for the proposal ended on April 4, 2016. We received one comment, a letter from the Alaska

Department of Environmental Conservation dated May 9, 2016, acknowledging our work and supporting the proposal. We received no other comments.

II. Final Action

The EPA is approving, and incorporating by reference into the Alaska SIP, changes to the following provisions, state effective April 17, 2015:

- 18 AAC 50.010 Ambient Air Quality Standards, except paragraphs (7) and (8);
- 18 AAC 50.015 Air Quality Designations, Classifications, and Control Regions;
- 18 AAC 50.020 Baseline Dates and Maximum Allowable Increases;
- 18 AAC 50.035 Documents, Procedures and Methods Adopted by Reference, except paragraphs (a)(6) and (b)(4);
- 18 AAC 50.040 Federal Standards Adopted by Reference, except (a), (b), (c), (d), (e), (g), (i), (j), and (k); and
- 18 AAC 50.215 Ambient Air Quality Analysis Methods, except (a)(4).

We note that we previously approved the submitted rule revisions related to transportation conformity at 18 AAC 50.700 through 18 AAC 50.750, and 18 AAC 50.990 on September 8, 2015 (80 FR 53735). This action is being taken under section 110 and part C of title I of the CAA.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Alaska regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through *http://www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 18, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 9, 2016.

Dennis J. McLerran,

Regional Administrator, Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart C—Alaska

■ 2. In § 52.70, the table in paragraph (c) is amended by revising entries 18 AAC 50.010, 18 AAC 50.015, 18 AAC 50.020, 18 AAC 50.035, 18 AAC 50.040, and 18 AAC 50.215.

The revisions read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED ALASKA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanations
Alaska Administrative Code Title 18 Environmental Conservation, Chapter 50 Air Quality Control (18 AAC 50)				
*	*	*	*	*
18 AAC 50.010	Ambient Air Quality Standards ...	4/17/15	5/19/16, [Insert **Federal Register** citation].	except (7) and (8).
18 AAC 50.015	Air Quality Designations, Classifications, and Control Regions.	4/17/15	5/19/16, [Insert **Federal Register** citation].	
18 AAC 50.020	Baseline Dates and Maximum Allowable Increases.	4/17/15	5/19/16, [Insert **Federal Register** citation].	
*	*	*	*	*
18 AAC 50.035	Documents, Procedures and Methods Adopted by Reference.	4/17/15	5/19/16, [Insert **Federal Register** citation].	except (a)(6) and (b)(4).
18 AAC 50.040	Federal Standards Adopted by Reference.	4/17/15; 11/9/14	5/19/16, [Insert **Federal Register** citation]; 1/7/15, 80 FR 832.	except (a), (b), (c), (d), (e), (g), (j), and (k).
*	*	*	*	*
18 AAC 50.215	Ambient Air Quality Analysis Methods.	4/17/15	5/19/16, [Insert **Federal Register** citation].	except (a)(4).
*	*	*	*	*

* * * * *

■ 3. Section 52.96 is amended by revising paragraph (a) to read as follows:

§ 52.96 Significant deterioration of air quality.

(a) The State of Alaska Department of Environmental Conservation Air Quality Control Regulations are approved as meeting the requirements of 40 CFR 51.166 and part C for preventing significant deterioration of air quality. The specific provisions approved are: 18 AAC 50.010 except (7) and (8); 18 AAC 50.015; 18 AAC 50.020; 18 AAC 50.035(a)(4), (a)(5), and (b)(1); 18 AAC 50.040(h); and 18 AAC 50.215 except (a)(4) as in effect on April 17, 2015; 18 AAC 50.990 as in effect on November 9, 2014; 18 AAC 50.306 as in effect on January 4, 2013; 18 AAC 50.345 except (b), (c)(3), and (l) as in effect on September 14, 2012; and 18 AAC 50.250 as in effect on October 1, 2004.

* * * * *

[FR Doc. 2016–11626 Filed 5–18–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0793; FRL–9946–58–Region 9]

Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; Arizona; Infrastructure Requirements To Address Interstate Transport for the 2008 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving in part and disapproving in part State Implementation Plan (SIP) revisions submitted by the Arizona Department of Environmental Quality to address the interstate transport requirements of Clean Air Act (CAA or Act) section 110(a)(2)(D)(i) with respect to the 2008 ozone national ambient air quality standard (NAAQS). We are approving the portion of the Arizona SIP pertaining to significant contribution to nonattainment or interference with maintenance in another state and disapproving the portion of Arizona's SIP pertaining to interstate transport visibility requirements. Where EPA is disapproving a portion of the Arizona SIP revision, the deficiencies have already been addressed by a federal implementation plan (FIP).

DATES: This final rule is effective on June 20, 2016.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2015–0793 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps, multi-volume reports), and some may not be available in either location (*e.g.,* confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Tom Kelly, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 972–3856, *kelly.thomasp@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms "we," "us," and "our" refer to EPA.

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I. Background
II. Public Comments
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IV. Statutory and Executive Order Reviews

I. Background

CAA sections 110(a)(1) and (2) require states to address basic SIP requirements to implement, maintain and enforce the NAAQS no later than three years after the promulgation of a new or revised standard. Section 110(a)(2) outlines the specific requirements that each state is required to address in this SIP submission that collectively constitute the "infrastructure" of a state's air quality management program. SIP submittals that address these requirements are referred to as "infrastructure SIPs" (I–SIP). In particular, CAA section 110(a)(2)(D)(i)(I) requires that each SIP for a new or revised NAAQS contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will "contribute significantly to nonattainment" (prong 1) or "interfere with maintenance" (prong 2) of the applicable air quality standard in any other state. CAA section 110(a)(2)(D)(i)(II) requires SIP provisions that prevent interference with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality (prong 3) or to protect visibility (prong 4). This action addresses the section 110(a)(2)(D)(i) requirements of prongs 1, 2 and 4 with respect to Arizona's I–SIP submissions.

On March 27, 2008, EPA issued a revised NAAQS for ozone.[1] This action triggered a requirement for states to submit an I–SIP to address the applicable requirements of section 110(a)(2) within three years of issuance of the revised NAAQS. On December 27, 2012, the Arizona Department of Environmental Quality (ADEQ) submitted its 2008 ozone NAAQS I–SIP. On December 3, 2015, ADEQ submitted a supplement to the 2012 submittal further addressing 110(a)(2)(D)(i) prongs 1, 2, and 4.[2]

On July 14, 2015, EPA partially approved and partially disapproved Arizona's 2012 submittal for the 2008 ozone NAAQS for the I–SIP elements C, D, J, and K. EPA partially approved and partially disapproved the submittal for purposes of 110(a)(2)(D)(i)(II) prong 3 and partially approved and partially disapproved the submittal for purposes of 110(a)(2)(D)(ii) (relating to CAA sections 115 and 126).[3] We subsequently took action on I–SIP elements A, B, E–H, L, and M for the 2008 ozone NAAQS on August 10, 2015.[4] We also stated our intention to propose action on the I–SIP submittal for the 2008 ozone NAAQS 110(a)(2)(D)(i) prongs 1, 2, and 4 in an additional action.[5] Additionally, pursuant to a judgment issued by the Northern District of California in *Sierra Club* vs. *McCarthy,* EPA must take final action on 110(a)(2)(D) prongs 1, 2, and 4 of Arizona's December 2012 SIP revision by June 7, 2016.[6]

On March 22, 2016, EPA proposed to approve in part, and disapprove in part, the 2012 and 2015 SIP revisions addressing the infrastructure requirements of CAA section 110(a)(2)(D)(i) for the 2008 ozone NAAQS.[7] The rationale supporting EPA's actions is explained in our proposal notice and the associated TSD and will not be restated here. The proposed rule and TSD are available online at *http://www.regulations.gov,* Docket ID number EPA–R09–OAR–2015–0793.

II. Public Comments

EPA received no comments on the proposed action during the public comment period.

III. Final Action

Under CAA section 110(k)(3), and based on the evaluation and rationale presented in the proposed rule, the related TSD, and this final rule, EPA is approving in part and disapproving in part Arizona SIP revisions addressing the interstate transport requirements of CAA section 110(a)(2)(D) with respect to the 2008 ozone NAAQS.

EPA is approving Arizona's SIP as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) prongs 1 and 2 for the 2008 ozone NAAQS. EPA is disapproving Arizona's SIP with respect to the interstate transport requirements of CAA section 110(a)(2)(D)(i)(II) prong 4 for the 2008 ozone NAAQS. However, because EPA has issued Regional Haze FIPs addressing visibility requirements in Arizona, no additional FIP obligation is triggered by the disapproval of this portion of Arizona's infrastructure SIP. EPA will continue to work with Arizona to incorporate emission limits to address the requirements of the Regional Haze Rule into the state SIP.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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[1] National Ambient Air Quality Standards for Ozone; Final Rule, 73 FR 16436 (March 27, 2008).

[2] "Arizona State Implementation Plan Revisions for 2008 Ozone and 2010 Nitrogen Dioxide Under Clean Air Act Section 110(a)(2)(D) . . ." Signed December 3, 2015. Also see email from Heidi Haggerty of ADEQ: AZ 2015 Ozone Transport I–SIP Submittal Clarification. Sent December 9, 2015.

[3] Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; Arizona; Infrastructure Requirements for Lead and Ozone. 80 FR 40905 (July 14, 2015).

[4] Approval and Promulgation of State Implementation Plans; Arizona; Infrastructure Requirements for the 2008 Lead (Pb) and the 2008 8-Hour Ozone National Ambient Air Quality Standards (NAAQS). 80 FR 47859 (August 10, 2015).

[5] *Id.*

[6] Judgment, Sierra Club v. McCarthy, Case 4:14–cv–05091–YGR (N.D. Cal. May 15, 2015).

[7] Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; Arizona; Infrastructure Requirements to Address Interstate Transport for the 2008 Ozone NAAQS. 81 FR 1520. (March 22, 2016).

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 18, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Approval and promulgation of implementation plans, Incorporation by reference, Oxides of nitrogen, Ozone, and Volatile organic compounds.

Dated: May 6, 2016.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2016–11744 Filed 5–18–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2013–0696; FRL–9944–26–OAR]

RIN 2060–AS86

Technical Amendments to Performance Specification 18 and Procedure 6

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to make several minor technical amendments to the performance specifications and test procedures for hydrogen chloride (HCl) continuous emission monitoring systems (CEMS). This direct final rule also makes several minor amendments to the quality assurance (QA) procedures for HCl CEMS used for compliance determination at stationary sources. The performance specification (Performance Specification 18) and the QA procedures (Procedure 6) were published in the **Federal Register** on July 7, 2015. These amendments make several minor corrections and clarify several aspects of these regulations.

DATES: This rule is effective on August 17, 2016 without further notice, unless the EPA receives adverse comment by July 5, 2016. If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2013–0696, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Ms. Candace Sorrell, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Measurement Technology Group (Mail Code: E143–02), Research Triangle Park, NC 27711; telephone number: (919) 541–1064; fax number: (919) 541–0516; email address: *sorrell.candace@epa.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this rule is organized as follows:

I. General Information
  A. Why is the EPA using a direct final rule?
  B. Does this action apply to me?
  C. What should I consider as I prepare my comments for the EPA?
  D. Where can I obtain a copy of this document?
  E. Judicial Review
II. This Action
III. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
  B. Paperwork Reduction Act (PRA)
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E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act (CRA)

I. General Information

A. Why is the EPA using a direct final rule?

The EPA is publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. This action makes minor technical amendments to Performance Specification 18 (PS 18) and Procedure 6. However, in the "Proposed Rules" section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to announce the EPA's intent to amend PS 18 and Procedure 6, if adverse comments are received on this direct final rule by July 5, 2016. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. If the EPA receives adverse comment, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The EPA will address all public comments in a subsequent final rule based on the proposed rule. Please note that if the EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

B. Does this action apply to me?

The major entities that would potentially be affected by the final PS 18 and the QA requirements of Procedure 6 for gaseous HCl CEMS are those entities that are required to install a new HCl CEMS, relocate an existing HCl CEMS, or replace an existing HCl CEMS under any applicable subpart of 40 Code of Federal Regulations (CFR) part 60, 61, or 63. Table 1 of this preamble lists the current federal rules by subpart and the corresponding source categories to which the PS 18 and Procedure 6 potentially would apply.

TABLE 1—SOURCE CATEGORIES THAT WOULD POTENTIALLY BE SUBJECT TO PS 18 AND PROCEDURE 6

Subpart(s)	Source category
40 CFR part 63	
Subpart LLL	Portland Cement Manufacturing Industry.
Subpart UUUUU	Coal- and Oil-fired Electric Utility Steam Generating Units.
Subpart DDDDD	Industrial, Commercial, and Institutional Boilers and Process Heaters.

The requirements of PS 18 and Procedure 6 may also apply to stationary sources located in a state, district, reservation, or territory that adopts PS 18 or Procedure 6 in its implementation plan.

Table 2 lists the corresponding North American Industry Classification System (NAICS) codes for the source categories listed in Table 1 of this preamble.

TABLE 2—NAICS FOR POTENTIALLY REGULATED ENTITIES

Industry	NAICS Codes
Fossil Fuel-Fired Electric Utility Steam Generating Units	327310 [a] 921150
Portland Cement Manufacturing Plants	327310
Industrial, Commercial, and Institutional Boilers and Process Heaters	211 321 322 325 324 316, 326, 339 331 332 336 221 622 611

[a] Industry in Indian Country.

Tables 1 and 2 are not intended to be exhaustive, but rather they provide a guide for readers regarding entities potentially affected by this action. If you have any questions regarding the potential applicability of PS 18 and test procedures (Procedure 6) to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

C. What should I consider as I prepare my comments for the EPA?

a. *Submitting CBI.* Do not submit this information to the EPA through *https://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

b. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a CFR part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

D. Where can I obtain a copy of this action?

In addition to being available in the docket, an electronic copy of this rule will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN) Web site. Following publication, the EPA will post the **Federal Register** version of the promulgation and key technical documents at *http://www3.epa.gov/ttn/emc/propperf.html.*

E. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this action must be filed in the United States Court of Appeals for the DC Circuit by July 18, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

II. This Action

On July 7, 2015, the EPA promulgated PS 18, that includes requirements for the initial acceptance of CEMS to measure HCl emissions (80 FR 38628). In that same action, we promulgated Procedure 6 specifying the minimum QA requirements necessary for control and assessment of the quality of CEMS data submitted to the EPA. Performance Specification 18 is applicable to the evaluation of HCl continuous monitoring instruments for Portland cement facilities, electric generating units, and industrial, commercial, and institutional boilers and process heaters. After publication of PS 18 and Procedure 6, we identified minor definition inconsistencies and unintended differences between the proposal and the final rule. In this action, we are making corrections to PS 18 and Procedure 6 as noted below to eliminate such inconsistencies and to remove unintended changes that occurred between the notice of proposed rulemaking and the final rulemaking.

This action:

(1) Adds definitions for beam attenuation and beam intensity to clarify the meaning of these terms (Section 3.0);

(2) Clarifies which detection limits must be less than 20 percent of the applicable emission limit (Section 11.5.6.5);

(3) Revises the requirements to determine zero gas calibration drift measurements by allowing either exclusion or inclusion of the measurement optical path (Section 11.8.6.2);

(4) Revises definitions for terms C_i, and S, to make them consistent with other performance specifications (Section 12.1);

(5) Corrects equation 2 in PS 18 to include the average measured concentration of HCl used to calculate CEMS interference. This change clarifies that single or multiple interferent gases are allowed to be evaluated in PS 18 (Section 12.2);

(6) Revises equation 7 in PS 18 to include an additional term that allows correction for the measured native background HCl concentration. This revision permits calculations for either option in revised section 11.8.6.2 (Section 12.4.4);

(7) Corrects appendix A, equation 3 in PS 18 for calculating dilution factors when dynamic spike quality control measurements are made (PS 18 appendix A, Section 11.2.3);

(8) Clarifies, in Procedure 6, that QA for data above span is subject to the specific requirements in applicable rules or permits, that supersede the general requirements in Procedure 6 (Section 4.1.5 and 4.1.5.3);

(9) Resolves, in Procedure 6, prior confusion between greater than two clock hours and greater than two consecutive 1-hour averages in the measurement period for exceedance of span before additional CEMS responses checks are required (Section 4.1.5.1);

(10) Clarifies the units of measure (percent) required for Integrated Path CEMS beam intensity check (Section 4.2.1); and

(11) Corrects the incomplete reference to the equations required to calculate dynamic spiking error (DSE) (Section 5.2.4.2).

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and, therefore, was not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. These changes do not add information collection requirements beyond those currently required under the applicable regulations.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action makes minor technical correction and adds clarification in PS 18 and Procedure 6 and does not impose additional regulatory requirements on sources.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments, or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. This action adds additional language that clarifies several aspects for the performance standard and procedure and corrects some minor technical errors, but does not change the requirements for conducting the test method. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action does not relax the control measures on sources regulated by the rule and, therefore, will not cause emissions increases from these sources.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective August 17, 2016.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Continuous emission monitoring systems, Hydrogen chloride, Performance specifications, Test methods and procedures.

Dated: May 2, 2016.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. In appendix B to part 60, Performance Specification 18:

■ a. Revise Sections 3.1 through 3.23, 11.5.6.5, 11.8.6.2, 12.1, 12.2 and 12.4.4;

■ b. Add Sections 3.24, 3.25, and 12.2.1; and

■ c. Revise Section 11.2.3 in appendix A of Performance Specification 18.

The revisions and additions read as follows:

Appendix B to Part 60—Performance Specifications

* * * * *

PERFORMANCE SPECIFICATION 18—PERFORMANCE SPECIFICATIONS AND TEST PROCEDURES FOR GASEOUS HYDROGEN CHLORIDE (HCl) CONTINUOUS EMISSION MONITORING SYSTEMS AT STATIONARY SOURCES

* * * * *

3.0 *Definitions*

3.1 *Beam attenuation* is the reduction in electromagnetic radiation (light) throughput from the maximum beam intensity experienced during site specific CEMS operation.

3.2 *Beam intensity* is the electromagnetic radiation (light) throughput for an IP–CEMS instrument measured following manufacturers specifications.

3.3 *Calibration cell* means a gas containment cell used with cross stack or integrated path (IP) CEMS for calibration and to perform many of the test procedures required by this performance specification. The cell may be a removable sealed cell or an evacuated and/or purged cell capable of exchanging reference and other calibration gases as well as zero gas standards. When charged, it contains a known concentration of HCl and/or interference gases. The calibration cell is filled with zero gas or removed from the optical path during stack gas measurement.

3.4 *Calibration drift* (CD) means the absolute value of the difference between the CEMS output response and an upscale reference gas or a zero-level gas, expressed as a percentage of the span value, when the CEMS is challenged after a stated period of operation during which no unscheduled adjustments, maintenance or repairs took place.

3.5 *Centroidal area* means a central area that is geometrically similar to the stack or duct cross section and is no greater than 10 percent of the stack or duct cross-sectional area.

3.6 *Continuous Emission Monitoring System* (CEMS) means the total equipment required to measure the pollutant concentration or emission rate continuously. The system generally consists of the following three major subsystems:

3.6.1 *Sample interface* means that portion of the CEMS used for one or more of the following: Sample acquisition, sample transport, sample conditioning, defining the optical measurement path, and protection of the monitor from the effects of the stack effluent.

3.6.2 *HCl analyzer* means that portion of the HCl CEMS that measures the total vapor phase HCl concentration and generates a proportional output.

3.6.3 *Data recorder* means that portion of the CEMS that provides a permanent electronic record of the analyzer output. The data recorder may record other pertinent data such as effluent flow rates, various instrument temperatures or abnormal CEMS operation. The data recorder may also include automatic data reduction capabilities and CEMS control capabilities.

3.7 *Diluent gas* means a major gaseous constituent in a gaseous pollutant mixture. For combustion sources, either carbon dioxide (CO_2) or oxygen (O_2) or a combination of these two gases are the major gaseous diluents of interest.

3.8 *Dynamic spiking* (DS) means the procedure where a known concentration of HCl gas is injected into the probe sample gas stream for extractive CEMS at a known flow rate to assess the performance of the measurement system in the presence of potential interference from the flue gas sample matrix.

3.9 *Independent measurement(s)* means the series of CEMS data values taken during sample gas analysis separated by two times the procedure specific response time (RT) of the CEMS.

3.10 *Integrated path CEMS* (IP–CEMS) means an in-situ CEMS that measures the gas concentration along an optical path in the stack or duct cross section.

3.11 *Interference* means a compound or material in the sample matrix other than HCl whose characteristics may bias the CEMS measurement (positively or negatively). The interference may not prevent the sample measurement, but could increase the analytical uncertainty in the measured HCl concentration through reaction with HCl or by changing the electronic signal generated during HCl measurement.

3.12 *Interference test* means the test to detect CEMS responses to interferences that are not adequately accounted for in the calibration procedure and may cause measurement bias.

3.13 *Level of detection* (LOD) means the lowest level of pollutant that the CEMS can detect in the presence of the source gas matrix interferents with 99 percent confidence.

3.14 *Liquid evaporative standard* means a reference gas produced by vaporizing National Institute of Standards and Technology (NIST) traceable liquid standards of known HCl concentration and quantitatively diluting the resultant vapor with a carrier gas.

3.15 *Measurement error* (ME) is the mean difference between the concentration measured by the CEMS and the known concentration of a reference gas standard, divided by the span, when the entire CEMS, including the sampling interface, is challenged.

3.16 *Optical path* means the route light travels from the light source to the receiver used to make sample measurements.

3.17 *Path length* means, for an extractive optical CEMS, the distance in meters of the optical path within a gas measurement cell. For an IP–CEMS, path length means the distance in meters of the optical path that passes through the source gas in the stack or duct.

3.18 *Point CEMS* means a CEMS that measures the source gas concentration, either at a single point at the sampling probe tip or over a path length for IP–CEMS less than 10 percent of the equivalent diameter of the stack or duct cross section.

3.19 *Stack pressure measurement device* means a NIST-traceable gauge or monitor that measures absolute pressure and conforms to the design requirements of ASME B40.100–2010, "Pressure Gauges and Gauge Attachments" (incorporated by reference—see § 60.17).

3.20 *Reference gas standard* means a NIST-traceable gas standard containing a known concentration of HCl certified in accordance with an EPA traceability protocol in section 7.1 of this PS.

3.21 *Relative accuracy* (RA) means the absolute mean difference between the gas concentration or the emission rate determined by the CEMS and the value determined by the RM, plus the confidence coefficient of a series of nine test runs, divided by the average of the RM or the applicable emission standard.

3.22 *Response time* (RT) means the time it takes for the measurement system, while operating normally at its target sample flow rate, dilution ratio, or data collection rate to respond to a known step change in gas concentration, either from a low- or zero-level to a high-level gas concentration or from a high-level to a low or zero-level gas concentration, and to read 95 percent of the change to the stable instrument response. There may be several RTs for an instrument related to different functions or procedures (*e.g.*, DS, LOD, and ME).

3.23 *Span value* means an HCl concentration approximately equal to two times the concentration equivalent to the emission standard unless otherwise specified in the applicable regulation, permit or other requirement. Unless otherwise specified, the span may be rounded up to the nearest multiple of 5.

3.24 *Standard addition* means the addition of known amounts of HCl gas (either statically or dynamically) to the actual measurement path or measured sample gas stream.

3.25 *Zero gas* means a gas or liquid with an HCl concentration that is below the LOD of the measurement system.

* * * * *

11.0 *Performance Specification Test Procedure*

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11.5.6.5 If your system LOD field verification does not demonstrate a SAR greater than or equal to your initial controlled environment LOD, you must increase the SA concentration incrementally and repeat the field verification procedure until the SAR is equal to or greater than LOD. The site-specific standard addition detection level (SADL) is equal to the standard addition needed to achieve the acceptable SAR, and SADL replaces the controlled environment LOD. For extractive CEMS, the SADL is calculated as the ESA using Equation A7 in appendix A of this PS. For IP–CEMS, the SADL is the SA calculated using Equation A8 in appendix A of this PS. As described in section 13.1 of this PS, the LOD or the SADL that replaces an LOD must be less than 20 percent of the applicable emission limit.

* * * * *

11.8.6.2 For IP–CEMS, you must include the source measurement optical path while performing the upscale CD measurement; you may exclude the source measurement optical path when determining the zero gas concentration. Calculate the CD for IP CEMS using equations 4, 5, 6B, and 7 in section 12.4.

* * * * *

12.0 *Calculations and Data Analysis*

12.1 *Nomenclature*

C_i = Zero or HCl reference gas concentration used for test i (ppmv);
$C_{i,eff}$ = Equivalent concentration of the reference gas value, C_i, at the specified conditions (ppmv);
CC = Confidence coefficient (ppmv);
$CD_{extractive}$ = Calibration drift for extractive CEMS (percent);
CD_{IP} = Calibration drift for IP–CEMS (percent);
CD_0 = Calibration drift at zero HCl concentrations for an IP–CEMS (percent);
d_{avg} = Mean difference between CEMS response and the reference gas (ppmv);
d_i = Difference of CEMS response and the RM value (ppmv);
I = Total interference from major matrix stack gases, (percent);
LSF = Line strength factor for IP–CEMS instrument specific correction for temperature and gas matrix effects derived from the HITRAN and/or manufacturer specific database (unitless);
ΔMC_{avg} = Average of the 3 absolute values of the difference between the measured HCl calibration gas concentrations with and without interference from selected stack gases (ppmv);
MC_i = Measured HCl reference gas concentration i (ppmv);
$\overline{MC}_i$ = Average of the measured HCl reference gas concentration i (ppmv);
MC_{int} = Measured HCl concentration of the HCl reference gas plus the individual or combined interference gases (ppmv);
$ME_{extractive}$ = Measurement error for extractive CEMS (percent);
ME_{IP} = Measurement error for IP–CEMS (percent);
MN_{avg} = Average concentration at all sampling points (ppmv);
MN_{bi} = Measured native concentration bracketing each calibration check measurement (ppmv);
MN_i = Measured native concentration for test or run I (ppmv);
n = Number of measurements in an average value;
P_{stack} = Absolute stack pressure (mm Hg)
$P_{reference}$ = Absolute pressure of the calibration cell for IP–CEMS (mm Hg)
PL_{Cell} = Path length of IP–CEMS calibration cell (m);
PL_{Stack} = Path length of IP–CEMS stack optical path (m);
RA = Relative accuracy of CEMS compared to a RM (percent);
RM_i = RM concentration for test run i (ppmv);
RM_{avg} = Mean measured RM value (ppmv);
S = Span value (ppmv);
S_d = Standard deviation of the differences (ppmv);
S_{ti} = Stratification at traverse point i (percent);
SADL = Standard addition detection level (ppmv);
$t_{0.975}$ = One-sided t-value at the 97.5th percentile obtained from Table 5 in section 17.0 for n–1 measurements;
$T_{reference}$ = Temperature of the calibration cell for IP–CEMS (degrees Kelvin);
T_{stack} = Temperature of the stack at the monitoring location for IP–CEM (degrees Kelvin).

12.2 *Calculate the difference between the measured HCl concentration with and without interferents for each interference gas (or mixture) for your CEMS as:*

$$\Delta MC_{avg} = \frac{\sum_{i=1}^{3} |MC_i - MC_{int}|}{3} \qquad \text{Eq. 1}$$

Calculate the total percent interference as:

$$I = \sum_{i=1}^{n} \frac{\Delta MC_{avg}}{MC_i} * 100 \qquad \text{Eq. 2}$$

12.2.1 Calculate the equivalent concentration $C_{i,eff}$ using Equation 4:

$$C_{i,eff} = \left[C_i \times \frac{PL_{cell}}{PL_{Stack}} \times \frac{T_{stack}}{T_{reference}} \times \frac{P_{reference}}{P_{stack}} LSF \right] \qquad \text{Eq. 4}$$

* * * * *

12.4.4 Calculate the zero CD as a percent of span for an IP–CEMS as:

$$CD_0 = \frac{(|(MC_i - MN_b) - (MC_{i+1} - MN_b)|)}{S} * 100 \qquad \text{Eq. 7}$$

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PS–18 Appendix A Standard Addition Procedures

* * * * *

11.0 *Calculations and Data Analysis.* * * *

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11.2.3 If you determine your spike dilution factor using an independent stable tracer that is present in the native source emissions, calculate the dilution factor for dynamic spiking using equation A3:

$$DF = \frac{M_{spiked\ tracer} - M_{native\ tracer}}{C_{tracer\ spiked} - M_{native\ tracer}} \qquad \text{Eq. A3}$$

* * * * *

■ 3. In appendix F to part 60, revise Sections 4.1.5, 4.1.5.1, 4.1.5.3, and 5.2.4.2 in Procedure 6 to read as follows:

Appendix F to Part 60—Quality Assurance Procedures

* * * * *

Procedure 6. Quality Assurance Requirements for Gaseous Hydrogen Chloride (HCl) Continuous Emission Monitoring Systems Used for Compliance Determination at Stationary Sources

* * * * *

4.0 *Daily Data Quality Requirements and Measurement Standardization Procedures*

* * * * *

4.1.5 Additional Quality Assurance for Data above Span. Unless otherwise specified in an applicable rule or permit, this procedure must be used to assure data quality and may be used when significant data above span is being collected.

4.1.5.1 Any time the average measured concentration of HCl exceeds 150 percent of the span value for two consecutive 1-hour averages, conduct the following 'above span' CEMS response check.

* * * * *

4.1.5.3 Unless otherwise specified in an applicable rule or permit, if the 'above span' response check is conducted during the period when measured emissions are above span and there is a failure to collect at least one data point in an hour due to the response check duration, then determine the emissions average for that missed hour as the average of hourly averages for the hour preceding the missed hour and the hour following the missed hour

* * * * *

5.0 *Data Accuracy Assessment*

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5.2.4.2 Calculate results as described in section 6.4. To determine CEMS accuracy you must calculate the dynamic spiking error (DSE) for each of the two upscale audit gases using equation A5 in appendix A to PS–18 and Equation 6–3 in section 6.4 of Procedure 6 in appendix B to this part.

* * * * *

[FR Doc. 2016–10989 Filed 5–18–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0853; FRL–9945–82]

Maleic Anhydride; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of maleic anhydride (CAS Reg. No. 108–31–6) when used as an inert ingredient (stabilizer) in pesticide formulations applied to growing crops at a maximum concentration not to exceed 3.5% by weight in the pesticide formulation. Exponent, on behalf of Cheminova A/S, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an amendment to an existing requirement of a tolerance. This regulation eliminates the need to

establish a maximum permissible level for residues of maleic anhydride.

DATES: This regulation is effective May 19, 2016. Objections and requests for hearings must be received on or before July 18, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0853, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select "Test Methods and Guidelines."

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2014–0853 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 18, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2014–0853, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Petition for Exemption

In the **Federal Register** of April 6, 2015 (80 FR 18327) (FRL–9924–00), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP) IN–10771 by Exponent on behalf of Cheminova A/S, 1600 Wilson Boulevard, Suite 700, Arlington, VA 22209. The petition requested that 40 CFR 180.920 be amended by modifying an exemption from the requirement of a tolerance for residues of maleic anhydride (CAS Reg. No. 108–31–6) when used as an inert ingredient (stabilizer) in pesticide formulations applied to growing crops to allow for use at a maximum concentration not to exceed 5% in formulation. That document referenced a summary of the petition prepared by Exponent, the petitioner, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has modified the limitation on the maximum concentration in pesticide formulation from 5% to 3.5%. This limitation is based on the Agency's risk assessment which can be found at *http://www.regulations.gov* in document, Maleic Anhydride; Human Health Risk Assessment and Ecological Effects Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as an Inert Ingredient in Pesticide Products under 40 CFR 180.920, in docket ID number EPA–HQ–OPP–2014–0853.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for maleic anhydride including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with maleic anhydride follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by maleic anhydride as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

Maleic anhydride exhibits relatively low toxicity via oral and dermal routes of exposure. Maleic anhydride has been reported to be severely irritating to the skin and eyes of rabbits, dermally sensitizing to guinea pigs, and is a possible respiratory sensitizer.

In a six-month repeat dose inhalation study, CD rats, Engle hamsters, and Rhesus monkeys were exposed by inhalation (whole body) to 0, 1.1, 3.3 and 9.8 mg/m^{3} (0, 0.3, 0.8, and 2.4 ppm) maleic anhydride for six months. Body weights were decreased in rats at 3.3 and 9.8 mg/m^{3} (0.8, and 2.4 ppm) in the mid- and high-exposure groups at intervals during the study (<10%). However, at study termination, body weights were decreased only at the 9.8 mg/m^{3} exposure group (6–8%). These decreases in the body weights are not considered as an adverse effect. All other effects were limited to the respiratory tract and eye. All of these effects were considered indicative of irritation and judged to be reversible. The NOAEL for irritation in this study was 3.3 mg/m^{3} or 0.93 mg/kg/day based on localized eye/nasal irritation effects seen at the LOAEL of 9.8 mg/m^{3}. The NOAEL for systemic toxicity in rats, hamsters and monkeys is 9.8 mg/m^{3}, the highest dose tested.

In a 28-day inhalation study with maleic anhydride in Sprague-Dawley rats, evidence of nasal and ocular irritation (concentration-dependent) occurred at 12, 32 and 86 mg/m^{3}. Reduced body weight gain and food consumption as well as increased incidence of hemorrhagic lung foci occurred at 32 and 86 mg/m^{3}. The NOAEL for the systemic toxicity is 12 mg/m^{3} (3 ppm) based on the reduced body weights and food consumption seen at the LOAEL of 32 mg/m^{3}.

In a 90-day oral (dietary) study in rats were fed in the diet 0, 100, 250, or 600 mg/kg/day maleic anhydride for 90 days. At 600 mg/kg/day, there was slight proteinuria in both sexes, increased relative liver weight in males, increased relative/absolute kidney weights in both sexes. Macroscopic and microscopic kidney changes, including nephrosis were seen in male rats at 100, 250, and 600 mg/kg/day. The LOAEL for this study is 100 mg/kg/day. In a separate study, rats were fed in the diet 0, 20, or 40 mg/kg/day maleic anhydride, seven days a week for 90 days. There were no treatment-related effects. The NOAEL for this study is 40 mg/kg/day.

In a 183-day oral (dietary) study in rats there were renal lesions and an increase in the absolute and relative liver and kidney weights at 250 mg/kg/day and 600 mg/kg/day. The LOAEL for this study is 250 mg/kg/day. A NOAEL was not established.

In a 2-year oral (dietary) study in rats only marginal toxicity was observed which was evidenced by small (<6%), but dose-related, decrease in body weights of rats. The LOAEL for this study is 32 mg/kg/day and the NOAEL for this study is 10 mg/kg/day.

In a 90-day dietary study in dogs, there were no treatment related effects observed at doses up to 60 mg/kg/day, the highest dose tested.

In an oral (gavage) developmental toxicity study in CD rats, no treatment related adverse effects were observed. The NOAEL for both maternal and developmental toxicity was 140 mg/kg/day, the highest dose tested.

In a 2-generation oral (gavage) reproductive toxicity study in rats, significant mortality occurred in the F_0 and F_1 parental animals and maleic anhydride was toxic to parental animals in all dose groups (20, 55 and 150 mg/kg/day of maleic anhydride). There was no significant reduction in the percentage of pregnant females or the percentage of fertile males. Adverse effects on litter size and on pup survival were observed at the dose of 55 mg/kg/day and above in the F_2 litters. Maleic anhydride was toxic to parental animals in all dose groups. For parental toxicity the LOAEL was 20 mg/kg/day. Although a NOAEL for parental toxicity was not established, the selected NOAEL (which is from the 2-year toxicity study in the rat) will be protective of the kidney and bladder effects seen at the lowest dose tested in this study, since the 2-year toxicity study examined those organs and found no effects. The NOAEL for offspring toxicity was 55 mg/kg/day based on decreased pup survival observed at 150 mg/kg/day.

Maleic anhydride was negative for mutagenicity or chromosomal aberrations in a battery of tests of genotoxicity including a bacterial gene mutation test, an *in vivo* mammalian chromosomal aberration test using rat bone marrow and an *in vitro* chromosomal test.

In the previously described 2-year dietary study, male and female rats were exposed to 0, 10, 32, or 100 mg/kg/day maleic anhydride in feed for two years. There were no increases in tumor incidence that were considered related to maleic anhydride exposure. Additionally in a two-year chronic feeding study on Osborne-Mendel rats fed 0, 0.5, 1.0 or 1.5% maleic acid in their diets for two years resulted in no treatment-related increases in tumors.

A 1-hour neurotoxicity inhalation study exposed rats to 0.72 mg/L of maleic acid which produced generalized inactivity, hyperpnea and sedation within 15 minutes of exposure. Gross necropsy revealed no significant findings. No neurotoxic effects have been reported in the other available studies.

No immunotoxicity studies on maleic anhydride or maleic acid were available in the database.

In a metabolism study, dogs were fed 60 mg/kg/day maleic anhydride for 90 days. Using a one compartment model, uptake rate and elimination rate constants were calculated as 3.49×10^{-3} per day and 8.32×10^{-2} per day, respectively. Based on this model, 99% of steady state was reached by day 55 of the study.

Maleic anhydride is readily hydrolyzed to maleic acid under aqueous conditions and is then hydroxylated to malic acid, which participates in the Krebs cycle or may be excreted unchanged or in conjugated form.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

An acute effect was not found in the database for maleic anhdyride.

The 2-year oral toxicity study in rats was selected for dietary and dermal exposure scenarios (all non-acute durations) for this risk assessment. The NOAEL in this study was 10 mg/kg/day. The LOAEL was 32 mg/kg/day based on slight to marginal decreases in body weight. The rationale for selecting this study for the dietary is based on the fact that this study provided the lowest and most conservative toxicity endpoint in the most sensitive species for oral after a long-term exposure. No repeat dose dermal toxicity studies are available for maleic anhydride; the dermal risk assessment was conducted using the most sensitive conservative oral endpoint. An uncertainty factor of 100x was applied, 10x for interspecies variability and 10x for intraspecies variability; the FQPA safety factor was reduced to 1x. No dermal absorption studies were available for maleic anhydride or maleic acid, therefore, a dermal absorption value was estimated using the ratio of an oral LD_{50} and a dermal LD_{50}. The two studies used were the oral rabbit LD_{50} of 875 mg/kg and the dermal rabbit LD_{50} of 2,620 mg/kg. The resulting estimated dermal absorption was 33%. Therefore, a dermal absorption factor of 33% will be used for dermal exposure scenarios.

The 6-month inhalation toxicity study in rats was selected for inhalation exposure scenarios (all durations) for this risk assessment. The NOAEL in this study was 3.3 mg/m^3 or 0.93 mg/kg/day based on localized eye/nasal irritation effects seen at the LOAEL of 9.8 mg/m^3. Since the major effect of maleic anhydride is irritation via inhalation, this endpoint is protective of any systemic toxicity seen at concentrations of 32 mg/m^3 and above seen in the 28-day inhalation toxicity study. An uncertainty factor of 100x was applied, 10x for interspecies variability and 10x for intraspecies variability. The FQPA safety factor was reduced to 1x.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to maleic anhydride, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from maleic anhydride in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide chemical, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for maleic anhydride therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* The chronic dietary exposure assessment for this inert ingredient utilizes the Dietary Exposure Evaluation Model Food Commodity Intake Database (DEEM–FCID), Version 3.16, EPA, which includes food consumption information from the U.S. Department of Agriculture's National Health and Nutrition Examination Survey, "What We Eat In America", (NHANES/WWEIA). This dietary survey was conducted from 2003 to 2008. In the absence of actual residue data, the inert ingredient evaluation is based on a highly conservative model which assumes that the residue level of the inert ingredient would be no higher than the highest established tolerance for an active ingredient on a given commodity. Implicit in this assumption is that there would be similar rates of degradation between the active and inert ingredient (if any) and that the concentration of inert ingredient in the scenarios leading to these highest of tolerances would be no higher than the concentration of the active ingredient. The model assumes 100 percent crop treated (PCT) for all crops and that every food eaten by a person each day has tolerance-level residues. A complete description of the general approach taken to assess inert ingredient risks in the absence of residue data is contained in the memorandum entitled "Alkyl Amines Polyalkoxylates (Cluster 4): Acute and Chronic Aggregate (Food and Drinking Water) Dietary Exposure and Risk Assessments for the Inerts." (D361707, S. Piper, 2/25/09) and can be found at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2008–0738. In the case of maleic anhydride, EPA made specific adjustments to the dietary exposure assessment to account for the use limitation of maleic anhydride (as an inert ingredient in pesticide formulations applied to apples with a minimum preharvest interval of 21 days and at maximum concentration of 3.5% by weight in all other preharvest uses).

2. *Dietary exposure from drinking water.* For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for maleic anhydride, a conservative drinking water concentration value of 100 ppb based on screening level modeling was used to assess the contribution to

drinking water for the chronic dietary risk assessments for parent compound. These values were directly entered into the dietary exposure model.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.*, textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

Maleic anhydride may be used as inert ingredient in pesticide products that are registered for specific uses that may result in indoor or outdoor residential inhalation and dermal exposures. A screening-level residential exposure and risk assessment was completed utilizing conservative residential exposure assumptions. The Agency assessed short- and intermediate-term dermal and inhalation exposures for residential handlers that would result from low pressure handwand, hose end sprayer and trigger sprayer for outdoor scenarios of each pesticide type, herbicide, insecticide and fungicide and mopping, wiping and aerosol sprays for indoor scenarios. The Agency assessed post-application short-term dermal exposure for children and adults as well as short-term hand-to-mouth exposure for children from contact with treated lawns.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found maleic anhydride to share a common mechanism of toxicity with any other substances, and maleic anhydride does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that maleic anhydride does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10x) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10x, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is no evidence of increased quantitative or qualitative susceptibility of rat fetuses to the effects of maleic anhydride. In the 2-generation reproduction study, the LOAEL for parental toxicity was 20 mg/kg/day. No adverse effects on litter size or pup survival were noted at doses up to 55 mg/kg/day.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for maleic anhydride is adequate for characterizing the toxicity and assessing the risk from dietary exposure.

ii. There is no indication that maleic anhydride is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no indication that maleic anhydride is an immunotoxic chemical and there is no need for an immunotoxicity study or additional UFs to account for immunotoxicity.

iv. There is no evidence that maleic anhydride results in increased susceptibility in *in utero* in rats in the combined repeated dose toxicity study with the reproduction/developmental toxicity screening studies and prenatal developmental studies.

v. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on highly conservative model that assumes 100 percent crop treated (PCT) for all crops and that every food eaten by a person each day has residues of inert ingredient equivalent to the residue level of the highest established tolerance for an active ingredient on a given commodity. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to maleic anhydride in drinking water. EPA used similarly conservative assumptions to assess post application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by maleic anhydride.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, maleic anhydride is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to maleic anhydride from food and water will utilize 72.4% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in this unit, regarding residential use patterns, chronic residential exposure to residues of maleic anhydride is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Maleic anhydride may be used as an inert ingredient in pesticide products that are registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to maleic anhydride.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 112 for adults and 105 for children. Because EPA's level of concern for maleic anhydride is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Maleic anhydride is currently used as an inert ingredient in pesticide products that are registered for uses that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to maleic anhydride.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded the combined intermediate-term food, water, and residential exposures result in aggregate MOEs of 178 for adults and 119 for children. Because EPA's level of concern for maleic anhydride is a MOE of 100 or below, these MOEs are not of concern.

5. *Aggregate cancer risk for U.S. population.* Based on the discussion in Unit IV.A., maleic anhydride is not expected to pose a cancer risk.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to maleic anhydride residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Although EPA is establishing a limitation on the amount of maleic anhydride that may be used in pesticide formulations, an analytical enforcement methodology is not necessary for this exemption. The limitation will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* EPA will not register any pesticide for sale or distribution for use on growing crops with concentrations of maleic anhydride exceeding 3.5% by weight of the formulation.

B. Revisions to Petitioned-For Tolerances

Based upon an evaluation of the data included in the petition, EPA is establishing an exemption from the requirement of a tolerance for residues of maleic anhydride when used in pesticide formulations as an inert ingredient (stabilizer), not to exceed 3.5% by weight of the formulation, instead of the 5% limit requested. The basis for this revision can be found at *http://www.regulations.gov* in document Maleic Anhydride; Human Health Risk Assessment and Ecological Effects Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as an Inert Ingredient in Pre-harvest Pesticide Products under 40 CFR 180.920 in docket ID number EPA–HQ–OPP–2014–0853.

VI. Conclusions

Therefore, EPA is amending the existing exemption from the requirement of a tolerance under 40 CFR 180.920 for maleic anhydride (CAS Reg. No. 108–31–6). In addition to the existing limitation for use as an inert ingredient (stabilizer) in pesticide formulations applied to growing crops for use in pesticide formulations applied to apples with a minimum preharvest interval of 21 days, the Agency is extending the exemption for use in all pesticide formulations at a maximum concentration not to exceed 3.5% in the pesticide formulation. In order to clarify that this extension applies only to maleic anhydride, the Agency is separating the existing exemption for maleic anhydride from the existing maleic acid exemption.

VII. Statutory and Executive Order Reviews

This action establishes an exemption from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 6, 2016.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.920:

■ i. Remove the existing entry for "Maleic acid and maleic anhydride" from the table.

■ ii. Add alphabetically the following entries "Maleic acid," and "Maleic anhydride" to the table to read as follows:

§ 180.920 Inert ingredients used preharvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* *	* * *	* *
Maleic acid	For pesticide formulations applied to apples with a minimum preharvest interval of 21 days.	Stabilizer.
Maleic anhydride (CAS Reg. No. 108–31–6).	Not to exceed 3.5% in pesticide formulations; or for pesticide formulations applied to apples with a minimum preharvest interval of 21 days.	Stabilizer.
* *	* * *	* *

[FR Doc. 2016–11837 Filed 5–18–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1501, 1505, 1516, 1528, 1529, 1532 and 1552

[EPA–HQ–OARM–2015–0799; FRL 9945–66–OARM]

Environmental Protection Agency Acquisition Regulation; General, Publicizing Contract Actions, Types of Contracts, Bonds and Insurance, Taxes, Contract Financing, Solicitation Provisions and Contract Clauses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing a final rule to make administrative changes to the Environmental Protection Agency Acquisition Regulation (EPAAR). EPA does not anticipate any adverse comments.

DATES: This rule is effective on July 18, 2016 without further action, unless EPA receives adverse comment by June 20, 2016. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OARM–2015–0799, at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Julianne Odend'hal, Policy, Training, and Oversight Division, Acquisition Policy and Training Service Center (3802R), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington DC 20460; telephone number: (202) 564–5218; email address: *odend'hal.julianne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Why is EPA using a direct final rule?

EPA is publishing this rule without a prior proposed rule because EPA views this as a noncontroversial action and anticipates no adverse comment. EPAAR Parts 1501, 1505, 1516, 1528, 1529, 1532, and 1552 are being amended to make administrative changes to the EPAAR. If EPA receives adverse comment, a timely withdrawal will be published in the **Federal Register** informing the public that the rule will not take effect. Any parties interested in commenting must do so at this time.

II. Does this action apply to me?

The EPAAR applies to contractors who have a contract with the EPA.

III. What should I consider as I prepare my comments for EPA?

A. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI, and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

B. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

- Make sure to submit your comments by the comment period deadline identified.

IV. Background

EPAAR Parts 1501, 1505, 1516, 1528, 1529, 1532, and 1552 are being amended to make administrative changes.

V. Final Rule

This direct final rule makes the following changes: (1) Corrects references in EPAAR 1501.370 to read "1511.011–70 and 1511.011–72" instead of "1510.011–70 and 1510.011–72" and "1552.211–72" instead of "1552.210–72"; (2) corrects EPAAR 1505.203(a) to read "Government Point of Entry (GPE)" instead of "Commerce Business Daily (CBD)"; (3) corrects reference in EPAAR 1516.301–70 to read "1552.211–73" instead of "1552.212–70"; (4) deletes "(SEP 1995)" in EPAAR 1516.406(b); (5) corrects the title of EPAAR Part 1528 to read "Bonds and Insurance" instead of "Bonds of Insurance"; (6) removes "EPAAR Subpart 1529.4—Contract Clauses, 1529.401 Domestic contracts, 1529.401–70 [Reserved]"; (7) corrects EPAAR 1532.908 to read "non-commercial time and materials" instead of "fixed rate"; (8) corrects EPAAR 1552.211–78 to read "Contracting Officer's Representative (COR)" instead of "Project Officer"; (9) corrects the web address in EPAAR 1552.211–79(d) to read "*http://www2.epa.gov/irmpoli8/current-information-directives*" instead of "*http://wpa.gov/docs/irmpoli8/policies/index.htm*"; (10) corrects the prescription in EPAAR 1552.216–70 to read "1516.406(a)" instead of "1516.405(a)"; (11) corrects the date in the clause title in EPAAR 1552.216–72 to read "(JUL 2014)" instead of "(__ 2014)"; (12) corrects the reference in the prescription in EPAAR 1552.216–75 to read "1516.406(b)" instead of "1516.405(b)"; (13) corrects the reference in the prescription in EPAAR 1552.216–77 to read "1516.406(c)" instead of "1515.406(c)"; (14) corrects the reference in the prescription in EPAAR 1552.216–78 to read "1516.406(c)" instead of "1515.406(c)"; (15) corrects the reference in the prescription in EPAAR 1552.216–79 to read "1516.406(c)" instead of "1515.406(c)"; (16) corrects EPAAR 1552.232–70 Alternate I prescription to read "non-commercial time and materials" instead of "fixed rate"; (17) increases the number of fill-in lines in paragraph (a) of EPAAR clause 1552.237–72 from two to 15; and (18) corrects the EPAAR 1552.242–70 prescription to add "and non-commercial time and materials" after "cost-reimbursement."

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This action amends EPAAR Parts 1501, 1505, 1516, 1528, 1529, 1532, and 1552 to make administrative changes. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this action. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communication between EPA and Tribal governments, EPA specifically solicits additional comment on this rule from Tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, (February 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

K. Congressional Review

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

List of Subjects in 48 CFR Parts 1501, 1505, 1516, 1528, 1529, 1532, and 1552

Government procurement.

Dated: May 2, 2016.

John R. Bashista,

Director, Office of Acquisition Management.

For the reasons stated in the preamble, 48 CFR parts 1501, 1505, 1516, 1528, 1529, 1532 and 1552 are amended as set forth below:

PART 1501—GENERAL

■ 1. The authority citation for part 1501 continues to read as follows:

Authority: 5 U.S.C. 301: Sec. 205(c), 63 Stat. 390 as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418B.

1501.370 [Amended]

■ 2. Amend section 1501.370, table, by removing the text “1510.011–70 and 1510.011–72” and adding the text “1511.011–70 and 1511.011–72” in its place; and removing the text “1552.210–72” and adding the text “1552.211–72” in its place.

PART 1505—PUBLICIZING CONTRACT ACTIONS

■ 3. The authority citation for part 1505 is revised to read as follows:

Authority: 5 U.S.C. 301 and 41 U.S.C. 418b.

1505.203 [Amended]

■ 4. Amend section 1505.203, paragraph (a), by removing the words “Commerce Business Daily (CBD)” and adding the words “Government Point of Entry (GPE)” in their place.

PART 1516—TYPES OF CONTRACTS

■ 5. The authority citation for part 1516 is revised to read as follows:

Authority: 5 U.S.C. 301 and 41 U.S.C. 418b.

1516.301–70 [Amended]

■ 6. Amend section 1516.301–70 by removing the text “1552.212–70” and adding text “1552.211–73” in its place.

1516.406 [Amended]

■ 7. Amend 1516.406, paragraph (b) by removing the text “(SEP 1995)”.

PART 1528—BONDS AND INSURANCE

■ 8. The authority citation for part 1528 is added to read as follows:

Authority: 5 U.S.C. 301 and 41 U.S.C. 418b.

■ 9. The part 1528 heading is revised to read as set forth above.

PART 1529—TAXES

■ 10. The authority citation for part 1529 is revised to read as follows:

Authority: 5 U.S.C. 301 and 41 U.S.C. 418b.

Subpart 1529.4 [Removed and Reserved]

■ 11. Remove and reserve subpart 1529.4.

PART 1532—CONTRACT FINANCING

■ 12. The authority citation for part 1532 is revised to read as follows:

Authority: 5 U.S.C. 301 and 41 U.S.C. 418b.

1532.908 [Amended]

■ 13. Amend section 1532.908 by removing the words “fixed-rate” and adding the words “non-commercial time and materials” in its place.

PART 1552—SOLICATION PROVISIONS AND CONTRACT CLAUSES

■ 14. The authority citation for part 1552 continues to read as follows:

Authority: 5 U.S.C. 301 and 41 U.S.C. 418b.

1552.211–78 [Amended]

■ 15. Amend section 1552.211–78 by removing the words “EPA Project Officer” and adding the words “EPA Contracting Officer’s Representative (COR)” in its place and removing the words “EPA Project Officer’s” and adding “COR’s” in its place; and removing the text “(JUL 2015)” and adding the text “(JUL 2016)” in its place.

1552.211–79 [Amended]

■ 16. Amend section 1552.211–79, paragraph (d), by removing the text “*http://epa.gov/docs/irmpoli8/policies/index/html*” and adding the text “*http://www2.epa.gov/irmpoli8/current-information-directives*” in its place; and adding, after the clause heading, the text “(JUL 2016)”.

1552.216–70 [Amended]

■ 17. Amend the introductory text of section 1552.216–70 by removing the text “1516.405(a)” and adding the text “1516.406(a)” in its place.

1552.216–72 [Amended]

■ 18. Amend section 1552.216–72 by removing the text “(___ 2014)” and adding the text “(JUL 2014)” in its place.

1552.216–75 [Amended]

■ 19. Amend the introductory text of section 1552.216–75 by removing the text “1516.405(b)” and adding the text “1516.406(b)” in its place.

1552.216–77 [Amended]

■ 20. Amend the introductory text of section 1552.216–77 by removing the text “1515.406(c)” and adding the text “1516.406(c)” in its place.

1552.216–78 [Amended]

■ 21. Amend the introductory text of section 1552.216–78 by removing the text “1515.406(c)” and adding the text “1516.406(c)” in its place.

1552.216–79 [Amended]

■ 22. Amend the introductory text of section 1552.216–79 by removing the text “1515.406(c)” and adding the text “1516.406(c)” in its place.

1552.232–70 [Amended]

■ 23. Amend section 1552.232–70, in the introductory text of Alternate 1, by removing the words “fixed-rate” and adding the words “non-commercial time and materials” in its place.

1552.237–72 [Amended]

■ 24. Amend section 1552.237–72, paragraph (a), by adding 13 horizontal lines below the existing two horizontal lines.

■ 25. Amend section 1552.242–70 by revising the introductory text to read as follows:

1552.242–70 Indirect costs.

As prescribed in 1542.705–70, insert the following clause in all cost-reimbursement and non-commercial time and materials type contracts. If ceilings are not being established, enter "not applicable" in paragraph (c) of the clause.

* * * * *

[FR Doc. 2016–11838 Filed 5–18–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 175

[Docket No. PHMSA–2015–0165 (HM–262)]

RIN 2137–AF12

Hazardous Materials: Carriage of Battery-Powered Electronic Smoking Devices in Passenger Baggage

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) is issuing a final rule to prohibit passengers and crewmembers from carrying battery-powered portable electronic smoking devices (*e.g.,* e-cigarettes, e-cigs, e-cigars, e-pipes, e-hookahs, personal vaporizers, electronic nicotine delivery systems) in checked baggage and from charging these devices and their batteries on board the aircraft. However, these devices may continue to be carried in carry-on baggage. This action is consistent with the interim final rule (IFR) published in the **Federal Register** on October 30, 2015, and a similar amendment in the 2015–2016 Edition of the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). This final rule amends the Hazardous Materials Regulations to maintain alignment with the ICAO Technical Instructions. Furthermore, this final rule does not impact the existing rules on the transport of lithium batteries or other portable electronic devices that are transported for personal use in a passenger's checked or carry-on baggage.

DATES: Effective: June 20, 2016.

FOR FURTHER INFORMATION CONTACT: Kevin A. Leary, (202) 366–8553, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590–0001.

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I. Background

On October 30, 2015, PHMSA published an IFR in the **Federal Register** [80 FR 66817] that prohibits passengers and crewmembers from carrying battery-powered portable electronic smoking devices (*e.g.,* e-cigarettes, e-cigs, e-cigars, e-pipes, personal vaporizers, electronic nicotine delivery systems) in checked baggage and from charging these devices and their batteries on board the aircraft. The use of battery-powered portable electronic smoking devices has been rising substantially, and they have increasingly become a common item in passenger baggage. Prior to the issuance of this IFR, airline passengers and crewmembers were permitted to carry these devices in either checked or carry-on baggage under the provisions for portable electronic devices contained in § 175.10(a)(18) of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). However, the provisions for portable electronic devices do not adequately address the safety risks posed by battery-powered portable electronic smoking devices, which include a heating element as a function of their design. Specifically, a battery-powered portable electronic smoking device contains a liquid, an atomizer or heating element, and a battery. When this device is operated the heating element vaporizes the liquid, so when in checked baggage, the device may lead to the generation of extreme heat with potential ignition of nearby contents.

Recent fire incidents involving battery-powered portable electronic smoking devices in checked baggage and actions taken by the Federal Aviation Administration (FAA) and ICAO all of which are described in the October 30, 2015 IFR, prompted action to address this issue. The requirements in this final rule apply only to battery-powered portable electronic smoking devices (*e.g.,* e-cigarettes, e-cigs, e-cigars, e-pipes, e-hookahs, personal vaporizers, electronic nicotine delivery systems). Notably, this final rule does neither prohibits passengers from transporting other devices containing batteries for personal use (such as laptop computers, cell phones, cameras, etc.) in checked or carry-on baggage, nor does it restrict passengers from transporting batteries for personal use in carry-on baggage.

II. Comment Discussion

PHMSA received eleven comments to the October 30, 2015 IFR: Four of the commenters supported the provisions of the IFR as written; four of the commenters suggested the prohibition of the carriage of battery-powered portable electronic smoking devices should be extended to carry-on baggage; one commenter suggested that the prohibition should also be extended to prohibit such devices to be transported as mail on passenger aircraft; and two commenters objected to all or part of the IFR.

The four commenters who recommended that PHMSA extend the prohibition of the IFR to prohibit the carriage of battery-powered portable electronic smoking devices in carry-on and checked baggage noted that if these devices pose a fire risk they should not be permitted in the cabin of an aircraft either. PHMSA believes that prohibiting the carriage of these devices only in checked baggage best targets the safety issue that we are addressing. Permitting the carriage of these devices only in carry-on baggage or on the person would be the best alternative because when carried in the passenger cabin, the flight crew can quickly intervene in the case of overheating, short circuit, or fire.

One commenter recommended that PHMSA amend the IFR to prohibit the transport of battery-powered portable electronic smoking devices in the mail because a package containing such devices could be carried as mail aboard a passenger aircraft. The HMR do not apply to any matter subject to the postal laws and regulations of the United States; therefore, this amendment is beyond the scope of PHMSA's regulatory authority (see § 171.1(d)(7)). However, we shared the comment with the United States Postal Service (USPS) for their consideration.

Of the two commenters who objected to all or part of the IFR, one was opposed to the provisions and suggested that the devices should be made safer rather than restricting their use. PHMSA is taking this action to address a documented safety issue, and we do not believe the restrictions will place an undue burden on device manufacturers, aircraft passengers, crewmembers, or airlines. The other commenter recommended that PHMSA amend the IFR to eliminate the prohibition against the charging of standalone e-cigarette batteries, further providing information on one specific product that incorporates safety circuitry to prevent overcharge and evidence that it is intended to be charged only when removed from the heater cartridge. In the IFR, PHMSA noted that many of the documented device failures occurred while the device was charging, resulting in the ignition of nearby combustible materials. PHMSA restricted charging of the devices and their batteries during flight to address those concerns and to maintain consistency with the ICAO Technical Instructions. While the commenter provided information on one battery-powered portable electronic smoking device, there are many configurations, both with and without removable batteries, to consider. Additionally, users who modify their device may bypass the built-in safety circuitry designed to prevent overheating. PHMSA determined that the limited prohibition against the carriage of battery-powered portable electronic smoking devices in checked baggage and a prohibition against the charging of these devices and their batteries while on board the aircraft address the known risks in the narrowest possible way.

III. Regulatory Analyses and Notices

A. Statutory Authority for This Rulemaking

This rulemaking is issued under the authority of the Federal Hazardous Materials Transportation Law (49 U.S.C. 5101 *et seq.*), which: (1) Authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce (49 U.S.C. 5103(b)); (2) authorizes the Administrator of the Federal Aviation Administration to promote safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security (49 U.S.C. 44701); and (3) authorizes the Secretary of Transportation to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities (49 U.S.C. 5120(b)).

In this final rule, PHMSA amends the HMR to maintain alignment with the ICAO Technical Instructions.

B. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

Executive Orders 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) require Federal agencies to regulate in the “most cost-effective manner,” to make a “reasoned determination that the benefits of the intended regulation justify its costs,” and to develop regulations that “impose the least burden on society.” This final rule is not considered a significant regulatory action under Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034].

PHMSA does not anticipate that the actions in this final rule will impose a significant impact on airlines, airline passengers, crewmembers, or the Federal government. In fact, most U.S. airlines proactively notified airline passengers (*e.g.,* Web sites, automated check-in facilities, signage, and verbal notifications from the operator) prior to the issuance of the October 30, 2015 IFR. PHMSA, the FAA, and the Transportation Security Administration (TSA) each updated its guidance to passengers on prohibited items, including battery-powered portable electronic smoking devices, to reflect the provisions of the IFR. Moreover, airline passengers and crewmembers are still permitted to carry battery-powered portable electronic smoking devices in their carry-on baggage or on their person. Spare lithium batteries must be individually protected by placement in original retail packaging or by otherwise insulating terminals (*e.g.,* by taping over exposed terminals or placing each battery in a separate plastic bag or protective pouch). However, as this is consistent with existing requirements for the carriage of spare lithium batteries for portable electronic devices, PHMSA does not anticipate this will have any impact on passengers. Some passengers may incur a non-quantifiable cost in the lost opportunity to charge their device while on board the aircraft, but PHMSA expects this will be a small number of passengers and the per-passenger cost will be small.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”), published in the **Federal Register** on August 10, 1999 [64 FR 43255], and the President’s memorandum (“Preemption”), published in the **Federal Register** on May 22, 2009 [74 FR 24693]. This final rule does not adopt any regulation that: (1) Has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government; or (2) imposes substantial direct compliance costs on State and local governments. PHMSA is not aware of any State, local, or tribal requirements that would be preempted by amending the provisions for the carriage of battery-powered portable electronic smoking devices by airline passengers or crewmembers. In addition, this final rule does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”). This final rule does not have tribal implications and does not impose substantial direct compliance costs, therefore the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires Federal agencies to review regulations to assess their impact on small entities, unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. Although this final rule places a limited prohibition on the carriage of battery-powered portable electronic smoking devices by airline passengers and crewmembers in checked baggage, such individuals would still be permitted to carry these devices in carry-on baggage or on their person. The provisions of this final rule do not impose any direct or indirect adverse economic impacts for small units of government, businesses, or other organizations, and PHMSA did not receive any comments specifically relating to the impact of the IFR rule on small entities.

F. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $155 million or more, adjusted for inflation, to State, local, or tribal governments, in the aggregate, or to the private sector in any one year, and it is the least burdensome alternative that achieves the objective of the rule.

I. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609 (“Promoting International Regulatory Cooperation”), Federal agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed the effects of this final rule to ensure that it does not cause unnecessary obstacles to foreign trade. Therefore, this rulemaking is consistent with Executive Order 13609 and PHMSA’s obligations under the Trade Agreement Act, as amended.

J. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires that Federal agencies consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. This final rule only impacts how a passenger may carry battery-powered portable electronic smoking devices on aircraft, not whether a passenger may carry such devices. We find that there are no significant environmental impacts associated with this final rule.

K. Privacy Act

Anyone may search the electronic form of written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). The DOT’s complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or by visiting *http://www.regulations.gov/search/footer/privacyanduse.jsp.*

List of Subjects in 49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, we amend 49 CFR Chapter I as follows:

PART 175—CARRIAGE BY AIRCRAFT

■ 1. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81 and 1.97.

■ 2. In § 175.10, revise paragraph (a)(19) to read as follows:

§ 175.10 Exceptions for passengers, crewmembers, and air operators.

(a) * * *

(19) Except as provided in § 173.21 of this subchapter, battery-powered portable electronic smoking devices (*e.g.*, e-cigarettes, e-cigs, e-cigars, e-pipes, e-hookahs, personal vaporizers, electronic nicotine delivery systems) when carried by passengers or crewmembers for personal use must be carried on one’s person or in carry-on baggage only. Spare lithium batteries also must be carried on one’s person or in carry-on baggage only and must be individually protected so as to prevent short circuits (by placement in original retail packaging or by otherwise insulating terminals, *e.g.*, by taping over exposed terminals or placing each battery in a separate plastic bag or protective pouch). Each lithium battery must be of a type which meets the requirements of each test in the UN Manual of Tests and Criteria, Part III, Subsection 38.3. Recharging of the devices and/or the batteries on board the aircraft is not permitted. Each battery must not exceed the following:

(i) For lithium metal batteries, a lithium content of 2 grams; or

(ii) For lithium ion batteries, a Watt-hour rating of 100 Wh.

* * * * *

Issued in Washington, DC, on May 13, 2016, under authority delegated in 49 CFR 1.97.

Marie Therese Dominguez,

Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2016–11729 Filed 5–18–16; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 81, No. 97
Thursday, May 19, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

[Docket Nos. PRM–51–30 and PRM–51–31; NRC–2014–0014 and NRC–2014–0055]

Generic Determinations Regarding the Environmental Impacts of Spent Fuel Storage and Disposal When Considering Nuclear Power Reactor License Applications

AGENCY: Nuclear Regulatory Commission.

ACTION: Petitions for rulemaking; denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying two petitions for rulemaking (PRMs), PRM–51–30 and PRM–51–31, submitted by Diane Curran on behalf of 34 environmental organizations (the petitioners). The petitioners request that the NRC revise certain regulations that concern the environmental impacts of spent fuel storage and disposal for nuclear power plant license applications. The NRC is denying the petitions because they provide an insufficient basis to consider a rulemaking to revise such regulations.

DATES: The dockets for the petitions, PRM–51–30 and PRM–51–31, are closed on May 19, 2016.

ADDRESSES: Please refer to Docket IDs NRC–2014–0014 and NRC–2014–0055, as appropriate, when contacting the NRC about the availability of information regarding these petitions. You can access publicly-available documents related to the petitions using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket IDs NRC–2014–0014 and NRC–2014–0055. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the Section IV, Availability of Documents.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Jenny C. Tobin, Office of Nuclear Reactor Regulation, telephone: 301–415–2328, email: *Jennifer.Tobin@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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I. The Petitions

Section 2.802 of title 10 of the *Code of Federal Regulations* (10 CFR), "Petition for rulemaking," provides an opportunity for any interested person to petition the Commission to issue, amend, or rescind any regulation. The NRC has consolidated its response to PRM–51–30 and PRM–51–31 because both petitions make similar rulemaking requests. The NRC did not request public comment on PRM–51–30 and PRM–51–31 because there was sufficient information for review and these issues have been well-vetted in past NRC proceedings.

PRM–51–30

The petitioners filed the first of their two petitions on December 20, 2013, as a part of their comments on the NRC's proposed Continued Storage Rule (formerly known as the Waste Confidence Decision and Rule) and that rule's associated generic environmental impact statement (Continued Storage Generic Environmental Impact Statement (GEIS)).[1] The petitioners filed a corrected version of the first petition on January 7, 2014. The NRC published a notice of receipt of the first petition in the **Federal Register** (FR) on April 21, 2014, and assigned it Docket No. PRM–51–30 (79 FR 22055).

The petition requests that the NRC revise certain regulations in 10 CFR part 51 that concern the environmental impacts of spent fuel storage and disposal for nuclear power plants. The NRC implements its responsibilities under the National Environmental Policy Act (NEPA) through its 10 CFR part 51 regulations. The petitioners assert that the NRC's 10 CFR part 51 regulations are "balkanized" and "disparate and inconsistent," and that these regulations should be made into a "cohesive and consistent whole." The petitioners identified the following NRC regulations as being within the scope of their request: 10 CFR 51.53(c),[2] 10 CFR 51.51 (Table S–3),[3] 10 CFR 51.71(d),[4] and Table B–1, "Summary of

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[1] The NRC published the Continued Storage Rule as a proposed rule on September 13, 2013 (78 FR 56776), and as a final rule on September 19, 2014 (79 FR 56238). As part of the final rule, all of the public comments on the proposed rule were addressed in NUREG–2157, "Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel."

[2] Section 51.53 is entitled "Post construction environmental reports." Paragraph (c) describes the contents of the required environmental report submitted by an applicant in support of its application to renew a nuclear power plant's operating license.

[3] Table S–3 is entitled "Table of Uranium Fuel Cycle Environmental Data" and is set forth at 10 CFR 51.51. Table S–3 shows the maximum environmental effect per annual fuel requirement for an operating reactor and is the basis for evaluating the contribution of the environmental effects of uranium mining and milling, the production of uranium hexafluoride, isotopic enrichment, fuel fabrication, reprocessing of irradiated fuel, transportation of radioactive materials and management of low-level wastes and high-level wastes related to uranium fuel cycle activities to the environmental costs of licensing a nuclear power reactor.

[4] Section 51.71 is entitled "Draft environmental impact statement—contents." Paragraph (d) describes the analysis required to be included in draft EISs. For license renewal actions, the supplemental draft EIS relies on the findings and other supporting information in NUREG–1437, Revision 1, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants—Final Report" (2013).

Findings on NEPA Issues for License Renewal on Nuclear Power Plants," in appendix B to subpart A of 10 CFR part 51 (Table B–1), as well as the NRC's proposed amendments to 10 CFR 51.23, as set forth in its September 13, 2013, proposed rule (78 FR 56776).[5]

Section 51.53(c) and a portion of 10 CFR 51.71(d) are premised upon NUREG–1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants," an environmental impact statement (EIS) initially published in May 1996 and then revised and updated in June 2013 (License Renewal GEIS).[6] The License Renewal GEIS describes the potential environmental impacts of renewing the operating license of a nuclear power plant for an additional 20 years. The NRC classifies the license renewal issues described in the License Renewal GEIS as either generic or site-specific. Generic issues concern environmental impacts that are common to all nuclear power plants. Site-specific issues are addressed initially by the license renewal applicant (*i.e.,* a nuclear power plant licensee seeking a renewal of its operating license under the NRC's license renewal regulations in 10 CFR part 54) in its environmental report, which is required by 10 CFR 51.45, and then by the NRC, in its supplemental environmental impact statement (SEIS) to the License Renewal GEIS prepared for each license renewal application.[7] For any given license renewal action, the License Renewal GEIS together with the site-specific SEIS (along with any other applicable generic EISs) documents the NRC's NEPA analysis.

In Table B–1, generic issues are designated as "Category 1" issues and site-specific issues are designated as "Category 2" issues. Absent new and significant information, Category 1 issues are not required to be re-analyzed for an applicant's environmental report or the staff's SEIS. Table B–1 codifies the findings of the License Renewal GEIS and is wholly concerned with nuclear power plant license renewal.[8]

The purpose of Table S–3 is to support the environmental review for new reactor license applications. In addition to considering the environmental impacts of the construction and operation of a commercial nuclear power reactor, the NRC considers the contributions from the uranium fuel cycle activities.[9] Table S–3 identifies the uranium fuel cycle impacts, generically, for new reactor license applications.

The petitioners also assert that the NRC's proposed amendments to 10 CFR 51.23, as set forth in the NRC's proposed rule of September 13, 2013 (78 FR 56776), are "confusing" to the extent that the proposed continued storage regulation included safety findings, which should be placed in either 10 CFR parts 50 or 52, and because the proposed regulation no longer includes the "reasonable assurance" finding. The petitioners also assert that Table S–3 has been "repudiated" and that it is inconsistent with the findings in Table B–1. In addition, the petitioners assert that Table B–1 does not include a finding as to whether offsite spent fuel disposal impacts are significant or not.

The petitioners further assert that 10 CFR 51.53(c) and 51.71(d) "excuse" license renewal applicants and the NRC, respectively, from addressing spent fuel storage impacts in individual license renewal cases. As both regulatory provisions are premised upon the findings in the License Renewal GEIS, the petitioners, essentially, object to the finding that impacts of spent fuel storage during the license renewal period are a Category 1, or generic, issue and have a "small" impact. Finally, the petitioners assert that the economic costs of spent fuel storage and disposal should be incorporated into reactor cost-benefit analyses and that the need for power should be considered in license renewal decisions.

PRM–51–31

The petitioners filed their second petition on February 18, 2014. The petitioners' second petition asserts that COMSECY–13–0030, "Staff Evaluation and Recommendation for Japan Lessons-Learned Tier 3 Issue on Expedited Transfer of Spent Fuel"[10] (the expedited spent fuel transfer analysis), and NUREG–2161, "Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark I Boiling Water Reactor,"[11] constitute new and significant information. The petitioners request that the NRC "duly modify NRC's regulations that make or rely on findings regarding the environmental impacts of spent fuel storage during reactor operation, including Table B–1 and all regulations approving standardized reactor designs."

The NRC published a notice of receipt of the second petition in the **Federal Register** on May 1, 2014, and assigned it Docket No. PRM–51–31 (79 FR 24595). The petitioners subsequently submitted an "amended petition" for rulemaking on June 26, 2014, seeking to add "the observations made by [former] Chairman Macfarlane in her dissenting comments" on the expedited spent fuel transfer analysis. The petitioners assert that the former Chairman's dissenting vote on the expedited spent fuel transfer analysis provides "new and significant" information that would affect the NRC's environmental reviews. The NRC treated the "amended petition" as a supplement to the February 18, 2014, petition and re-noticed the petition, along with the supplement, for informational purposes only (79 FR 42989; July 24, 2014).

II. Reasons for Denial

The NRC is denying the petitions because the petitioners have not presented a sufficient basis to amend the regulations. The petitioners largely contend that they present new and significant information that requires the agency to revisit its previous NEPA analyses that form the bases for the challenged regulations. Under Commission precedent, information that provides a "seriously different picture" of the environmental consequences than previously considered is new and significant information.[12] As explained below, the NRC finds that the petitioners' information does not provide a "seriously different picture" of the environmental consequences of spent fuel storage. As a result, the NRC concludes that the current technical bases for those regulations challenged by the petitioners remain sound.

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[5] The proposed amendments to 10 CFR 51.23 were adopted in the final rule (79 FR 56238; September 19, 2014). Section 51.23 is entitled "Environmental impacts of continued storage of spent nuclear fuel beyond the licensed life for operation of a reactor" and states that the Commission "has generically determined that the environmental impacts of continued storage of spent nuclear fuel beyond the licensed life for operation of a reactor are those impacts identified in NUREG–2157 [the Continued Storage GEIS]" (10 CFR 51.23(a)).

[6] The current version of the License Renewal GEIS is NUREG–1437, Revision 1.

[7] 10 CFR 51.95(c).

[8] Table B–1 was amended to reflect the June 2013 License Renewal GEIS update. The NRC rule amending Table B–1 and other 10 CFR part 51 regulations was published in the **Federal Register** on June 20, 2013 (78 FR 37282).

[9] Uranium fuel cycle activities include "uranium mining and milling, the production of uranium hexafluoride, isotopic enrichment, fuel fabrication, spent fuel storage and disposal" (44 FR 45362; August 2, 1979).

[10] COMSECY–13–0030, "Memorandum from Mark Satorius, Executive Director for Operations, to NRC Commissioners Re: Staff Evaluation and Recommendation for Japan Lessons-Learned Tier 3 Issue on Expedited Transfer of Spent Fuel" (November 12, 2013), and documents cited therein.

[11] NUREG–2161, "Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark I Boiling Water Reactor" (September 2014).

[12] *Hydro Res. Inc.,* CLI–99–22, 50 NRC 3, 14 (1999) (quoting *Sierra Club* v. *Froehike,* 816 F.2d 205, 210 (5th Cir. 1987)); *see generally Marsh* v. *Oregon Natural Resources Council,* 490 U.S. 360 (1989).

The petitioners assert that the NRC's environmental review regulations are "balkanized"

The petitioners assert that "[t]he NRC's piecemeal and disjointed approach to the consideration of spent fuel storage and disposal impacts violates the NEPA principle that an agency may not segment its analysis in a manner that conceals the environmental significance of its action." Segmentation refers to instances where a Federal agency splits a project into smaller components to avoid preparing an EIS, or where an agency does not consider related actions in a single EIS.[13] The NRC does not agree that its approach to the consideration of spent fuel storage and disposal impacts is piecemeal and disjointed or that NRC's environmental review regulations in 10 CFR part 51 are "balkanized" or result in NEPA segmentation.

While the petitioners have pointed to some instances where the agency relies on generic analyses as part of its overall NEPA review for certain licensing actions, the petitioners have not shown any case where the NRC artificially divided a licensing action into smaller components. Rather, as discussed below, the NRC fully considers the environmental impacts of each licensing action through a combination of site-specific EISs and, where appropriate, GEISs. The use of generic analyses by the NRC to support licensing decisions has been upheld by the U.S. Supreme Court.[14]

In addition to the License Renewal GEIS and the Continued Storage GEIS, the NRC prepares EISs for all new reactor and license renewal applications. Within the umbrella of both its generic and site-specific EISs, the NRC adequately considers the spent fuel storage impacts of its licensing decisions. The EISs for new nuclear power reactors describe the environmental impacts from the onsite storage and management of spent nuclear fuel and offsite disposal based on 40 years of reactor operation, which is the maximum initial term of a reactor license.[15] The License Renewal GEIS describes the environmental impacts from the onsite storage and offsite disposal of spent nuclear fuel generated during an additional 20 years of reactor operation (*i.e.*, 20 years beyond the expiration of the initial license).[16] The Continued Storage GEIS describes the environmental impacts of the continued storage of spent nuclear fuel beyond the licensed life for operation of a reactor. Additionally, spent fuel storage and disposal impacts are considered by the NRC staff during each new reactor license and license renewal environmental review to determine if there is new and significant information that could alter the generic conclusions.

Moreover, the underlying technical bases for the consideration of spent fuel storage and disposal impacts in EISs for new power reactor licenses and the License Renewal GEIS are the same. Combined with the Continued Storage GEIS, these NEPA documents provide a complete analysis of spent fuel storage and disposal environmental impacts. The regulations in 10 CFR part 51 are premised upon, and support, this NEPA framework of generic EISs supported by site-specific EISs.

The NRC's approach improves the effectiveness of environmental reviews by generically resolving issues that are not substantially different from one proposed action to another, while still ensuring that those impacts are considered in subsequent licensing actions. The NRC conducts environmental and safety reviews for the issuance of licenses for the operation of nuclear power plants including the onsite storage of spent nuclear fuel. The NRC has also conducted separate environmental and safety reviews for the issuance of specific licenses for the storage of spent nuclear fuel in independent spent fuel storage installations (ISFSIs).[17] With respect to spent fuel disposal, an EIS would fully discuss the environmental impacts for any proposed action to dispose of spent fuel in a geologic repository. In addition, the NRC has previously determined the potential radiological effects of offsite spent fuel disposal in a permanent repository or some other permanent disposal scenario while evaluating the environmental effects of the uranium fuel cycle.[18]

The consideration of spent fuel storage and disposal environmental impacts builds upon the knowledge gained from previous environmental reviews and associated rulemakings and is consistent throughout the NRC's regulations in that the NRC relies on the same technical bases to make impact determinations. The only differences are the timeframes in which these impacts occur and whether the impacts occur during continued onsite storage or offsite disposal. In each of these regulatory situations, the technical bases remain the same.

Tables S–3 and B–1 in the NRC's regulations were developed at separate times for different purposes but have common technical bases. The 2014 continued storage rule, and its supporting Continued Storage GEIS, updated the NRC's NEPA findings in Table B–1 for issues pertaining to "Onsite storage of spent nuclear fuel" and "Offsite radiological impacts of spent nuclear fuel and high-level waste disposal." In doing so, the NRC effectively incorporated the NEPA analysis of continued spent fuel storage into license renewal. For new reactors, 10 CFR 51.23(b) directs that the impact determinations in NUREG–2157 shall be deemed incorporated into the associated EIS. And for licensing actions for which an environmental assessment (EA) is being prepared (such as an ISFSI built under a specific license at a site occupied by a nuclear power reactor), 10 CFR 51.30(b) directs that the impacts determinations in NUREG–2157 regarding the continued storage of spent fuel shall be considered, if such impacts are relevant to the proposed action.

For a given future reactor licensing action that relies on the Continued Storage GEIS and rule, the NRC will incorporate the environmental impacts analyzed in the Continued Storage GEIS into the overall licensing decision. The NRC's NEPA review for each licensing action that involves either a new reactor or a license renewal application will fully account for the reasonably foreseeable impacts of spent fuel storage and disposal, including, where applicable, the impacts that have been analyzed generically in the Continued Storage GEIS and License Renewal GEIS. The NRC concludes that its 10 CFR part 51 environmental review regulations are internally consistent and are not inappropriately segmented, and therefore, there is no reason to amend these regulations.

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[13] *Delaware Riverkeeper Network* v. *FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014) ("An agency impermissibly 'segments' NEPA review when it divides connected, cumulative, or similar federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration."); *see also* Council on Environmental Quality (CEQ) regulation, 40 CFR 1508.25.

[14] In a 1983 decision concerning a challenge to Table S–3, the U.S. Supreme Court stated that "[t]he generic method chosen by the agency is clearly an appropriate method of conducting the hard look required by NEPA." *Baltimore Gas & Elec. Co.* v. *NRDC*, 462 U.S. 87, 101, 103 S.Ct. 2246, 2254 (1983).

[15] 10 CFR 52.104.

[16] 10 CFR 54.31.

[17] NRC regulation, 10 CFR 72.3, defines an ISFSI as "a complex designed and constructed for the interim storage of spent nuclear fuel."

[18] See WASH–1248, "Environmental Survey of the Uranium Fuel Cycle," April 1974, and NUREG–0116, "Environmental Survey of the Reprocessing and Waste Management Portions of the LWR Fuel Cycle," October 1976.

The petitioners assert that Table S–3 has been repudiated

The petitioners' expert, Dr. Arjun Makhijani, in a declaration attached to the petitioners' January 2014 submission, states that the Table S–3 finding regarding the impacts of spent fuel disposal is no longer valid because the finding is based upon the disposal of spent fuel in a bedded salt repository and that such disposal would result in zero releases of radioactive effluents, and therefore, zero radiological dose. Dr. Makhijani asserts that

> [m]oreover, we note that Table S–3 at 10 CFR 51.51 is invalid for estimating high-level waste disposal impacts. Among other things, its underlying assumption of disposal in a bedded salt repository for spent fuel disposal was repudiated by the NRC itself in 2008.[19]

The petitioners, through Dr. Makhijani's declaration, assert that the NRC must prepare a new analysis concerning the impacts of spent fuel disposal.

Contrary to Dr. Makhijani's assertion, the NRC has never repudiated Table S–3; the original assumption of spent fuel disposal in a bedded salt repository is not germane to the overall purpose of Table S–3 nor does the change in media for storing spent fuel undermine the findings of Table S–3. Dr. Makhijani's statement evaluates Table S–3 in isolation and does not consider later developments in the NRC's regulatory policy and U.S. Supreme Court precedent. The Atomic Energy Commission, the predecessor agency of the NRC, promulgated the initial version of Table S–3 on April 22, 1974 (39 FR 14188). Since the promulgation of Table S–3, the Nuclear Waste Policy Act of 1982 (NWPA) adopted deep geologic disposal as the nation's solution for spent fuel disposal. Furthermore, in 1983 the U.S. Supreme Court, in its *Baltimore Gas & Elec. Co.* v. *National Resources Defense Council (NRDC)* decision,[20] upheld both Table S–3 and the approach taken by the NRC in using Table S–3 data in individual licensing proceedings. In *Baltimore Gas & Elec. Co.* v. *NRDC,* the U.S. Supreme Court recognized that the purpose of Table S–3 was not to evaluate or select the most effective long-term waste disposal technology or develop site selection criteria.[21] The Court noted that the NRC's intent, as stated in the 1979 rule revising Table S–3 (44 FR 45362; August 2, 1979), was to estimate the impact of the long-term waste disposal method conservatively.[22]

This conservative analysis included the NRC's use of the zero release assumption.[23] The Court also noted that other aspects of Table S–3 were premised upon the assumption that "all volatile materials in the fuel would escape to the environment" prior to the sealing of the geologic repository; this assumption balanced the zero-release assumption, an approach that the Court found acceptable.[24] In addition to concluding that it was "not unreasonable" for the NRC to employ the zero release assumption, the Court stated that "the zero-release assumption is but a single figure in an entire Table, which the Commission expressly designed as a risk-averse estimate of the environmental impact of the fuel cycle . . . [a] reviewing court should not magnify a single line item beyond its significance as only part of a larger Table." [25]

Following the enactment of the NWPA and the *Baltimore Gas & Elec. Co.* v. *NRDC* decision, the NRC issued a Waste Confidence decision in 1984 (49 FR 34658; August 31, 1984) and subsequently updated this decision in 1990 (55 FR 38472; September 18, 1990) and again in 2010 (75 FR 81032; December 23, 2010). In its 1990 revision, the Commission discussed the relationship of Table S–3 with its Waste Confidence decision. Specifically, the Commission noted that the promulgation of Table S–3 was the outgrowth of efforts to generically evaluate the environmental impacts of the operation of a light water reactor and in so doing, that Table S–3 assigned numerical values for environmental costs resulting from uranium fuel cycle activities to support 1 year of light water reactor operation. The number of curies indicated for spent fuel disposal in Table S–3 reflects the total volume of waste material, not the amount of radioactivity projected to be released from the repository—an issue that is to be addressed in the safety and environmental review for the actual geologic repository itself.

Table S–3 lists environmental data to be used by applicants and the NRC staff for new reactor license applications under 10 CFR parts 50 and 52. Specifically, Table S–3 is the basis for evaluating the environmental effects of the portions of the uranium fuel cycle for light water reactors that occur before new fuel is delivered to the plant and after spent fuel is removed from the plant site. The NRC has made generic determinations that the radiological impacts of the uranium fuel cycle on individuals off-site will remain at or below the Commission's regulatory limits (*e.g.,* the public dose limits set forth in 10 CFR part 20). The NRC described this generic determination and conclusion in the License Renewal GEIS.[26] Additionally, as part of the new reactor EISs under 10 CFR part 52 and the License Renewal GEIS, the NRC concluded that the assumptions and methodology used in preparing Table S–3 were conservative enough that the impacts described by the use of Table S–3 would still be bounding. In these EISs, the staff discussed why the contemporary fuel cycle impacts are below those identified in Table S–3 and as such, Table S–3 remains bounding.[27]

The NRC concludes that Table S–3 is bounding because, as reflected in Section 4.12.1.1 of the License Renewal GEIS, industry practice has shown that the current fleet of reactors uses nuclear fuel more efficiently due to higher fuel burnup. Therefore, less uranium fuel per year of reactor operation is required than in the past to generate the same amount of electricity. Fewer spent fuel assemblies per reactor-year are generated, hence, the waste storage and deep geologic repository impacts are lessened. The petitioners have not provided any new and significant information that would cause the NRC to revisit these conclusions regarding Table S–3.

While the NRC and the U.S. Department of Energy (DOE) have, in the past, concentrated efforts regarding geologic repository research and licensing efforts on a non-bedded salt repository, characterizing the resulting analysis as confirming that there is a risk of "significant" radiation releases and radiation doses from deep geologic disposal is not accurate. As stated in Volume 1, Appendix B of the Continued Storage GEIS, "the consensus within the scientific and technical community engaged in nuclear waste management is that safe geologic disposal is achievable with currently available technology. After decades of research into various geological media, no insurmountable technical or scientific problem has emerged to challenge the conclusion that safe disposal of spent fuel and high-level radioactive waste can be achieved in a mined geologic repository."[28]

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[19] "Declaration of Dr. Arjun Makhijani Regarding the Waste Confidence Proposed Rule and Draft Generic Environmental Impact Statement," attached to PRM–51–30 (paragraph 2.8 on p. 6).

[20] *Baltimore Gas & Elec. Co.* v. *National Resources Defense Council,* 462 U.S. 87, 103 S.Ct. 2246 (1983).

[21] *Id.,* 462 U.S. at 102, 103 S.Ct. at 2254–55.

[22] *Id.,* 462 U.S. at 102, 103 S.Ct. at 2255.

[23] *Id.* ("The zero-release assumption cannot be evaluated in isolation. Rather, it must be assessed in relation to the limited purpose for which the Commission made the assumption.").

[24] *Id.,* 462 U.S. at 103, 103 S.Ct. at 2255.

[25] *Id.,* 462 U.S. at 102–03, 103 S.Ct. at 2255.

[26] 2013 GEIS section 4.12.1.1, p. 4–185.

[27] For example, see the Bell Bend Nuclear Power Plant EIS, NUREG 2179, vol. 1, section 6.1 (April 2015), for a discussion of the NRC determination that Table S–3 remains bounding.

The issue of concern to the NRC in considering the disposal of spent nuclear fuel in a geologic repository has not been whether a zero-release assumption will be met or ultimately the type of environmental media (*e.g.*, bedded salt, basalt, granite, etc.) selected for the repository but rather that the appropriate standards are established and met, thereby ensuring that any releases of radioactive materials to the environment would not be inimical to public health and safety. Radiation dose limits for disposal of radioactive materials are typically no greater than 100 mrem/yr (such as the U.S. Environmental Protection Agency (EPA) limits for the proposed Yucca Mountain geologic repository). Although a geologic repository meeting such radiation dose limits is not a "zero" release facility, compliance with these dose limits would provide adequate protection of public health and safety. Given the substantial effort developing repositories, it is reasonable to assume geologic disposal facilities can be developed within a variety of geologic formations and types that would be protective of public health and safety. For example, the NRC-National Academy of Sciences (NAS) study, referred to by Dr. Makhijani, concludes on the overall performance of candidate repositories that "[a]ll radionuclides in unreprocessed spent fuel can be adequately contained."[29] In conclusion, the NRC has determined that Table S–3 is still bounding and that the petitioners have not provided new and significant information that requires the NRC to amend Table S–3.

The petitioners assert that Table S–3 and Table B–1 are inconsistent with each other

The petitioners assert that Table S–3 and Table B–1 are inconsistent with each other. The petitioners state in PRM–51–30, "[t]he inconsistencies and questions raised by comparing Table S–3 and Table B–1 are unacceptable under NEPA's standard for clarity and rigor of scientific analysis." In his comments, Dr. Makhijani stated,

> Table S–3 summarizes the NRC's conclusion that the impacts of spent fuel disposal will be zero, based on the assumption that spent fuel will be disposed of in a bedded salt repository. Proposed Table B–1 contradicts Table S–3 by concluding that long-term doses could be as high as 100 millirem per year. But the NRC does not attempt to reconcile proposed Table B–1 and Table S–3. . . .[30]

The environmental effects of operating uranium fuel cycle facilities including radioactive waste disposal at a geologic repository were evaluated in two NRC documents, WASH–1248 and NUREG–0116. The results of these evaluations were summarized in and promulgated as Table S–3 in 10 CFR 51.51(b). Paragraph (a) in 10 CFR 51.51 states:

> [E]very environmental report prepared for the construction permit stage or early site permit stage or combined license stage of a light-water-cooled nuclear power reactor, and submitted on or after September 4, 1979, shall take Table S–3, Table of Uranium Fuel Cycle Environmental Data, as the basis for evaluating the contribution of the environmental effects of uranium mining and milling, the production of uranium hexafluoride, isotopic enrichment, fuel fabrication, reprocessing of irradiated fuel, transportation of radioactive materials and management of low-level wastes and high-level wastes related to uranium fuel cycle activities to the environmental costs of licensing the nuclear power reactor. Table S–3 shall be included in the environmental report and may be supplemented by a discussion of the environmental significance of the data set forth in the table as weighed in the analysis for the proposed facility.

The environmental effects or issues summarized in Table S–3 include: Land use; water consumption and thermal effluents; radioactive releases; burial of transuranic, high-level and low-level radioactive wastes; and radiation doses from transportation and occupational exposures. The contributions in Table S–3 for reprocessing, waste management, and transportation of wastes are maximized for either of the two fuel cycles (*i.e.*, a fuel cycle that includes spent fuel reprocessing and one that does not)—the cycle that results in the greater environmental impact, and thus the most conservative analysis, is used. The environmental impact values are expressed in terms normalized to show the potential impacts attributable to processing the fuel required for the operation of a 1,000–MWe nuclear power plant for 1 year at an 80 percent availability factor to produce about 800 MW-yr of electricity. This normalization is referred to as one reference reactor year. For each environmental consideration, Table S–3 presents a result that has been integrated over the entire uranium fuel cycle except during reactor operations.[31] The environmental impacts of reactor operations are addressed in the EIS prepared for each individual reactor licensing action (*i.e.*, an EIS for a new reactor licensing application or a SEIS for a license renewal application). Although certain fuel cycle operations and fuel management practices have changed over the years, the assumptions and methodology used in preparing Table S–3 were, and continue to be, conservative enough that the impacts described in Table S–3 are still bounding.

In similar fashion, the NRC assessed the generic environmental impacts of renewing the operating license for a nuclear power plant in the License Renewal GEIS. Table B–1 summarizes the Commission's findings on the scope and magnitude of the environmental effects of renewing the operating license for a nuclear power plant, based on technical bases documented in the 2013 update of the License Renewal GEIS. Subject to an evaluation of those Category 2 issues, which require further site-specific analysis, and the identification of possible new and significant information for any Category 1 or Category 2 issue, Table B–1 represents the analysis of the environmental impacts associated with the renewal of any operating license and is to be used in accordance with 10 CFR 51.95(c). On a 10-year cycle, the Commission intends to review the findings in Table B–1 and update the table if necessary. The latest review and update was completed in 2013.

Both the License Renewal GEIS and Table B–1 incorporate Table S–3 by reference.[32] Tables S–3 and B–1 were developed at separate times for different purposes. However, the technical bases for the consideration of spent fuel storage and disposal impacts for both tables are the same, and as such, the tables are consistent with each other. The impact of the spent nuclear fuel disposal finding in Table B–1 (*i.e.*, "Offsite radiological impacts of spent nuclear fuel and high-level waste disposal") is consistent with the solid waste disposal information presented in Table S–3, as the findings in Table B–1 could not have been reached without the environmental effects evaluations conducted in WASH–1248 and NUREG–

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[28] NUREG–2157, pg. 2 of Appendix B, Section B.2.1.

[29] NRC–NAS Report, "A Study of the Isolation System for Geologic Disposal of Radioactive Wastes," p. 8 and 11.

[30] Makhijani Declaration attached to PRM–51–30, p. 9.

[31] The only exception is that the waste quantities listed under the entry called "solids (buried onsite)" also include wastes generated at the reactor.

[32] Table B–1 references Table S–3 under the "Uranium Fuel Cycle" section of the table.

0116, which are summarized in Table S–3.

Moreover, even if there were differences in the assumptions in Table S–3 and Table B–1, those differences are not significant from a NEPA perspective. As noted above, the issue of concern to the NRC in considering the environmental impacts of the disposal of spent nuclear fuel in a geologic repository has not been whether a zero-release assumption will be met or ultimately the type of environmental media (*e.g.*, bedded salt, basalt, granite, etc.) selected for the repository but rather that the appropriate standards are established and met, thereby ensuring that any releases of radioactive materials to the environment would not be inimical to public health and safety. For NEPA purposes, such releases within regulatory limits are clearly not significant radiation releases and radiation doses. The NRC concludes that Tables B–1 and S–3 are consistent with each other and there is no technical or regulatory reason to amend either table.

No significance determination for "off-site spent fuel disposal" in Table B–1

The petitioners assert that Table B–1, which codifies the findings of the License Renewal GEIS, does not include a finding as to whether the impacts of spent fuel disposal are significant or not. The "significance determination" in NEPA is made by an agency in determining whether it is necessary to prepare an EIS for a given proposed action.[33] With respect to the environmental review of reactor license renewal applications, the NRC has already prepared a GEIS, the License Renewal GEIS. In addition, for each site-specific license renewal action, the NRC prepares a SEIS. Therefore, the lack of a finding as to whether the impacts of spent fuel disposal are "significant" or "not significant" is irrelevant, as the NRC has already satisfied the "significance determination" by preparing a generic EIS and by its regulatory requirement to prepare a site-specific EIS for each reactor license renewal application it considers.

Moreover, the NRC has extensively analyzed spent fuel storage and disposal environmental impacts in Table S–3, and in various EISs, namely, the License Renewal GEIS, the Continued Storage GEIS, and SEISs for individual license renewal actions. The License Renewal GEIS provides the regulatory and technical basis for the Commission's findings and the associated impact significance levels for each environmental NEPA issue listed in Table B–1. The NRC's evaluation of the environmental impacts of the issue, "Offsite radiological impacts of spent nuclear fuel and high-level waste disposal,"[34] was documented in the 1996 License Renewal GEIS, which relied upon the findings of the NRC's 1990 Waste Confidence Decision and Rule. In addition, the NRC analyzed the EPA's generic repository standards and dose limits in existence at the time and concluded that offsite radiological impacts warranted a Category 1 (generic) determination (61 FR 28467; June 5, 1996). However, due to the decision of the U.S. Court of Appeals for the DC Circuit in *New York* v. *NRC* and its remand of the 2010 Waste Confidence Decision and Rule (75 FR 81032; December 23, 2010), the NRC was not able to complete its review and update of the impact finding for this issue in the 2013 License Renewal GEIS (NUREG–1437, Revision 1) and update of Table B–1. As a result, the 2013 License Renewal GEIS and rule (78 FR 37282; June 20, 2013) reclassified the issue from Category 1 with no impact level assigned, to an uncategorized issue with an uncertain impact level.

On August 26, 2014, the Commission approved the Continued Storage Rule and its associated GEIS (Continued Storage GEIS) amending 10 CFR part 51 to revise the generic determination on the environmental impacts of continued storage of spent nuclear fuel beyond the licensed life for operation of a reactor. In making conforming changes to the Table B–1 entry for the issue "Offsite radiological impacts of spent nuclear fuel and high-level waste disposal," the final rule restored the Category 1 designation and references the existing radiation protection standards for Yucca Mountain instead of making a single impact finding.

The NRC's practice, once it has determined to prepare an EIS, has been to assign a significance level to most potential environmental impacts, by resource area or environmental issue, arising from the proposed action. These levels are "Small, Moderate, and Large." The assigning of these levels to any given impact is not required by law; it is solely a matter of NRC practice. Neither the Council on Environmental Quality's nor the NRC's regulations for implementing NEPA under 10 CFR part 51 explicitly require an agency to assign a single significance level to environmental impact issues; CEQ regulations state that "[i]mpacts shall be discussed in proportion to their significance" in the context of preparing environmental impact statements for agency actions.[35] Further, NRC does not assign such a level to every resource area or environmental issue covered by a given EIS. The NRC only assigns a single significance level for a generic issue where it is meaningful and appropriate to do so when considering both the context and intensity of a potential environmental impact.[36]

In this regard, the NRC has never assigned a single impact significance level to the issue of "Offsite radiological impacts of spent nuclear fuel and high-level waste disposal." Although the status of a repository, including a repository at Yucca Mountain, remains uncertain and beyond the control of the NRC, the NRC has adopted EPA's radiation protection standards (40 CFR part 197) for Yucca Mountain because they are the current standard for ensuring that the ultimate disposal of spent nuclear fuel will present no undue risk to public health and safety. As discussed in the Continued Storage GEIS, it is reasonable to believe that wherever a geologic repository is ultimately sited, radiological protection standards comparable to those established for Yucca Mountain will be issued if necessary. Given these considerations, the Commission's narrative finding in Table B–1 with respect to the issue of offsite disposal is appropriate. That finding states "[t]he Commission concludes that the impacts would not be sufficiently large to require the NEPA conclusion, for any plant, that the option of extended operation under 10 CFR part 54 should be eliminated. Accordingly, while the Commission has not assigned a single level of significance for the impacts of spent fuel and high level waste disposal, this issue is considered Category 1." Therefore, the Commission, by rule, has determined that a single significance determination is not necessary.

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[33] *Lower Alloways Creek Tp.* v. *Public Service Elec. & Gas Co.*, 687 F.2d 732, 740 (3rd Cir. 1987) ("[A]n agency must undertake a comprehensive assessment of the expected effects of a proposed action before it can determine whether that action is 'significant' for NEPA purposes . . . . [i]f, however, it is clear that the human environment will be 'significantly' affected, then a full-scale EIS is mandatory."); *Blue Mountains Biodiversity Project* v. *Blackwood*, 161 F.3d 1208, 1211–14, and 1216 (9th Cir. 1998) (Forest Service made clear error of judgment in its decision to prepare an environmental assessment, rather than an environmental impact statement); *see also* Mandelker, NEPA Law and Litigation, 2d, §§ 8.48–8.58.

[34] This issue was named "Offsite radiological impacts (spent fuel and high level waste disposal)" in the 1996 license renewal GEIS and rule.

[35] 40 CFR 1502.2(b).

[36] *See* CEQ regulation 40 CFR 1508.27, which defines the term "significantly," in relation to both "context" and "intensity."

The NRC concludes that the petitioners' significance determination argument does not provide a "seriously different picture" of the environmental consequences of spent fuel storage and disposal. Instead, based on the above, the NRC concludes that the petitioners' assertion that NEPA requires an agency to assign a single level of significance to the issue in question is without merit and that the petitioners' proposed amendment to the NRC's finding for the issue, "Offsite radiological impacts of spent nuclear fuel and high-level waste disposal," in Table B–1 in appendix B to subpart A of 10 CFR part 51 is not necessary.

The petitioners assert that license renewal applicants in 10 CFR 51.53(c) and NRC staff in 10 CFR 51.71(d) are excused from addressing spent fuel storage impacts in license renewal environmental reviews

The NRC disagrees with the petitioners' assertion that the NRC's regulations in 10 CFR 51.53(c) and 51.71(d) "excuse license renewal applicants and the NRC from addressing spent fuel storage impacts in license renewal cases." The NRC has determined that the potential environmental impacts of spent fuel storage are of a generic nature and as such, do not need to be re-analyzed for every license renewal action. As mentioned previously, for future reactor license renewal applications that rely on the Continued Storage and License Renewal GEISs, the NRC will incorporate the environmental impacts analyzed in the Continued Storage GEIS as well as in the License Renewal GEIS into the overall NEPA analysis supporting its licensing decision. The U.S. Supreme Court has upheld the use of generic environmental analyses by the NRC.[37] Moreover, as part of its environmental review for each license renewal application, the NRC reviews both generic and site-specific issues for new and significant information. In the event that the NRC determines that there is new and significant information, the NRC will consider such information when preparing the SEIS for that particular licensing action and, if necessary, will also determine whether the License Renewal GEIS or Continued Storage GEIS should be revised accordingly.

Moreover, the quality of the NRC's environmental analysis of spent fuel storage is not dependent on whether the NRC prepares a site-specific or generic analysis. In developing both the License Renewal GEIS and the Continued Storage GEIS, the NRC employed assumptions, including those based upon reactor licensee operating experience, that are sufficiently conservative to bound the predicted impacts such that any variances that may occur from site to site are unlikely to result in environmental impact determinations that are greater than those presented in both GEISs.[38] In addition, recent spent fuel studies (including the expedited spent fuel transfer regulatory analysis included in COMSECY–13–0030 and NUREG–2161) continue to support the findings of the License Renewal GEIS. Though the studies may contain "new" information, the information is not "significant" for the purpose of the environmental analysis. The NUREG–2161 compared spent fuel pool accident consequences from previous research studies and determined that they were of the same magnitude. Finally, the Continued Storage GEIS reinforces the Commission's original determination that supports use of a generic analysis.

The NRC concludes that the petitioners' arguments regarding 10 CFR 51.53(c) and 51.71(d) do not provide a "seriously different picture" of the environmental consequences of spent fuel storage and disposal. Instead, based on the above, the NRC concludes that spent fuel storage impacts are fully evaluated as part of the NRC's license renewal actions and that the petitioners' proposed amendments are not necessary.

The petitioners assert that the need for power and economic costs were excluded in license renewal environmental reviews

The petitioners assert that NRC regulations in 10 CFR 51.53(c) and 51.71(d) excuse license renewal applicants and the NRC staff from addressing the need for power in license renewal cases. The petitioners state, "[b]y excluding need for power from consideration in re-licensing decisions, the [Continued Storage] GEIS cripples its ability to assess the environmental impacts of storing spent fuel. This results in an 'unbounded' analysis of radiological risk." The petitioners also assert that "it is essential to incorporate the economic costs of spent fuel storage and disposal in reactor cost-benefit analyses." In conjunction with the issuance of the License Renewal GEIS in 1996, the Commission amended its regulations concerning environmental reviews for nuclear power plant license renewal actions.[39] These amendments defined the generic environmental impacts addressed in the License Renewal GEIS and the environmental impacts for which nuclear plant site-specific analyses were to be performed. The Commission stated in the June 5, 1996, final rule for the "Environmental Review for Renewal of Nuclear Power Plant Operating Licenses,"

> [T]he NRC will neither perform analyses of the need for power nor draw any conclusions about the need for generating capacity in a license renewal review. [The] definition of purpose and need reflects the Commission's recognition that, absent findings in the safety review required by the Atomic Energy Act of 1954, as amended, or in the NEPA environmental analysis that would lead the NRC to reject a license renewal application, the NRC has no role in the energy planning decisions of State regulators and utility officials. From the perspective of the licensee and the State regulatory authority, the purpose of renewing an operating license is to maintain the availability of the nuclear plant to meet system energy requirements beyond the term of the plant's current license.[40]

As stated in the 2013 License Renewal GEIS,

> The purpose and need for the proposed action (issuance of a renewed license) is to provide an option that allows for baseload power generation capability beyond the term of the current nuclear power plant operating license to meet future system generating needs. Such needs may be determined by other energy-planning decision-makers, such as State, utility, and, where authorized, Federal agencies (other than the NRC). Unless there are findings in the safety review required by the Atomic Energy Act or the NEPA environmental review that would lead the NRC to reject a license renewal application, the NRC does not have a role in the energy-planning decisions of whether a particular nuclear power plant should continue to operate.[41]

As shown by these statements, it has been the NRC's longstanding position not to consider the need for power or economic costs in making its license renewal decisions. Consideration of the need for power or the economic cost of renewing the operating license of a nuclear reactor is beyond the NRC's statutory and regulatory purview; rather, such consideration is the responsibility of State and local authorities and, where appropriate, Federal entities such as the Federal Energy Regulatory Commission or the Tennessee Valley Authority. The petitioners' assertion that NRC's regulatory approach of excluding need for power from consideration in license renewal decisions "cripples" NRC's ability to assess the environmental impacts of storing spent fuel is not new and significant information and thus does not provide a basis for amending the regulations.

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[37] *Baltimore Gas & Elec. Co.* v. *NRDC,* 462 U.S. at 101, 103 S.Ct. at 2254 ("The generic method chosen by the agency is clearly an appropriate method of conducting the hard look required by NEPA.").

[38] Statements of Consideration for 1996 (61 FR 28467, 28479–480) and 2013 (78 FR 37282, 37310) License Renewal GEISs.

[39] 61 FR 28467; June 5, 1996.

[40] 61 FR at 28472.

[41] License Renewal GEIS, NUREG–1437, Revision 1 (2013), Section 1.3, p. 1-3–1-4.

"Reasonable assurance" findings not included in proposed 10 CFR 51.23

In commenting upon the NRC's proposed Continued Storage rule (78 FR 56776; September 13, 2013), the petitioners asserted that the NRC's proposal to remove the "reasonable assurance" statement from 10 CFR 51.23(a) was improper. Prior to the promulgation of the Continued Storage final rule (79 FR 56238; September 19, 2014), 10 CFR 51.23(a) stated, in part, that "the Commission believes there is reasonable assurance that sufficient mined geologic repository capacity will be available to dispose of the commercial high-level radioactive waste and spent fuel generated in any reactor when necessary."[42] In the final Continued Storage rule, the NRC removed the "reasonable assurance" statement.[43] The statements of consideration of the final Continued Storage rule explain that 10 CFR 51.23(a) sets forth the NRC's generic determination that the environmental impacts of the continued storage of spent nuclear fuel beyond the licensed life for operation of a reactor are those impacts identified in NUREG–2157 (the Continued Storage GEIS). In particular, the statements of consideration note that,

> NEPA is a procedural statute directed at Federal agencies, and 10 CFR 51.23 (including the additional clarifying amendments) addresses the manner by which the NRC complies with NEPA with respect to the subject of continued storage. These amendments do not require action by any person or entity regulated by the NRC, nor do these amendments modify the substantive responsibilities of any person or entity regulated by the NRC.[44]

Consequently, there was no need to retain the "reasonable assurance" statement, which is a safety finding, as 10 CFR 51.23(a) stated only the generic environmental determination and the remainder of 10 CFR 51.23 concerns the NRC's NEPA compliance. In this regard, the statements of consideration explain,

> The [Continued Storage] GEIS fulfills the NRC's NEPA obligations and provides a regulatory basis for the rule rather than addressing the agency's responsibilities to protect public health and safety under the Atomic Energy Act (AEA), of 1954 as amended. Further, Appendix B of the [Continued Storage] GEIS discusses the technical feasibility of continued safe storage. It is important to note that, in adopting revised 10 CFR 51.23 and publishing the [Continued Storage] GEIS, the NRC is not making a safety determination under the AEA to allow for the continued storage of spent fuel. AEA safety determinations associated with licensing of these activities are contained in the appropriate regulatory provision addressing licensing requirements and in the specific licenses for facilities. Further, there is not any legal requirement for the NRC to codify a generic safety conclusion in the rule text. By not including a safety policy statement in the rule text, the NRC does not imply that spent fuel cannot be stored safely. To the contrary, the analysis documented in the [Continued Storage] GEIS is predicated on the ability to store spent fuel safely over the short-term, long-term, and indefinite timeframes. This understanding is based upon the technical feasibility analysis in Appendix B of the [Continued Storage] GEIS and the NRC's decades-long experience with spent fuel storage and development of regulatory requirements for licensing of storage facilities that are focused on safe operation of such facilities, which have provided substantial technical knowledge about storage of spent fuel. Further, spent fuel is currently being stored safely at reactor and storage sites across the country, which supports the NRC's conclusion that it is feasible for spent fuel to be stored safely for the timeframes considered in the [Continued Storage] GEIS.[45]

The petitions do not present any new and significant information that would form a basis to amend 10 CFR 51.23, particularly in light of the September 19, 2014, Continued Storage rulemaking.

The petitioners assert that expedited spent fuel transfer analysis is "new and significant information"

The petitioners request that the NRC "consider, in all pending and future reactor licensing and re-licensing decisions, new and significant information bearing on the environmental impacts of high-density pool storage in reactor pools and alternatives for avoiding or mitigating those impacts." The petitioners assert that the NRC generated new and significant information during its post-Fukushima Expedited Spent Fuel Transfer proceeding.

On October 9, 2013, the NRC released NUREG–2161, "Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark I Boiling Water Reactor" and, on November 12, 2013, the NRC delivered a regulatory analysis in COMSECY–13–0030, "Staff Evaluation and Recommendation for Japan Lessons-Learned Tier 3 Issue on Expedited Transfer of Spent Fuel." These documents concluded that spent fuel pools are very robust structures with large safety margins, and that proposed regulatory actions for spent fuel pool safety improvements were not warranted. This conclusion not only covers spent fuel pools at operating reactors applying for license renewal but also spent fuel pools that would be constructed at new reactor sites. Citing the low risk to public health and safety from spent fuel pool storage, the Commission subsequently concluded that regulatory action need not be pursued in Staff Requirements Memorandum (SRM), SRM–COMSECY–13–0030, issued on May 23, 2014.

The petitioners contend that former Chairman Allison Macfarlane's comments on COMSECY–13–0030, also provide new and significant information that requires the NRC to reconsider its impact findings in the 2013 license renewal GEIS. The former Chairman's comments were considered by the other Commissioners in the development of the SRM on this issue. However, the Commission determined in SRM–COMSECY–13–0030, that no further generic assessments concerning the expedited transfer of spent fuel to dry cask storage should be pursued. Notably, the SRM supported the staff's approach of using the NRC's Safety Goal Policy Statement of 1986 as a screening metric. The SRM is the agency's determination on this issue.

Nonetheless, the petitioners contend that NUREG–2161 and COMSECY–13–0030 constitute new and significant information based on those documents' discussion of the severity of the impact of a spent fuel pool accident, sensitivity studies showing that some mitigation measures could be cost beneficial, and the possibility that a reactor accident could impact the likelihood of a spent fuel pool fire. However, none of these sources of information provides "a seriously different picture" of the environmental consequences of spent fuel storage. First, as noted above, the NRC has frequently recognized that the consequences of a spent fuel pool accident could be large but has determined that the overall risk of spent fuel pool accidents is small in light of the low probability of such an event.[46] Therefore, the petitioners have not shown that the magnitude of the consequences of a spent fuel pool accident constitute new and significant information. Rather, NUREG–2161 and

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[42] 10 CFR 51.23(a) (2013).

[43] 79 FR at 56260.

[44] 79 FR at 56253.

[45] 79 FR at 56254–55.

[46] NUREG–1437, Rev.1, at E–34 to –339.

COMSECY–13–0030's recognition that the consequences of a spent fuel pool accident could be large but that the overall risk from such an event is small in light of the very low probability of such an event comports with the agency's previous considerations of this issue. Second, while the sensitivity studies may have shown that some mitigation measures could be cost-beneficial, they are based on alternate assumptions that do not represent the NRC's analysis of the most likely impacts of a spent fuel pool accident. In any event, petitioners have not shown with specificity that any information in these sensitivity studies would undermine the agency's overall conclusion that despite potentially large consequences, the very low probability renders the overall risk of a spent fuel pool accident very low. Finally, contrary to petitioners' assertions, the NRC has frequently responded to claims that the probability of a reactor accident could impact the probability of a spent fuel pool accident and repeatedly found that such a probability is very low.[47]

In conclusion, neither NUREG–2161, COMSECY–13–0030, nor SRM–COMSECY–13–0030 constitutes "new and significant information" requiring the NRC to supplement any of its prior EISs, whether generic or specific— or amend those "regulations that make or rely on findings regarding the environmental impacts of spent fuel storage during reactor operation, including Table B–1 and all regulations approving standardized reactor designs."

III. Determination of Petitions

For the reasons cited in Section II of this document, the NRC has concluded that the petitioners have not provided new and significant information that would form a basis to amend the NRC regulations identified in the PRM–51–30 and PRM–51–31.

Earlier 10 CFR Part 51 PRMs

Several of the regulations identified by the petitioners have been the subject of prior rulemaking petitions (*i.e.*, PRM–51–1, PRM–51–10, PRM–51–12, and PRMs-51–14 to 51–28) and issues similar to those raised by the petitioners were considered by the Commission in these prior petitions, therefore, these issues have been thoroughly evaluated by the Commission. The PRM–51–1 petitioner asserted that Table S–3 "seriously understate[d]" the impact on human health and safety from the uranium fuel cycle and that the Table S–3 values should be revised accordingly.[48] The NRC denied PRM–51–1 based upon the Commission's "generic determination that the radiological impacts of the uranium fuel cycle on individuals off-site will remain at or below the Commission's regulatory limits, and as such, are of small significance."[49] The NRC described this generic determination in Chapter 6 of the 1996 version of the License Renewal GEIS; the generic determination was based upon findings made in various NRC and EPA rulemakings.[50]

The petitioners in PRM–51–10 and PRM–51–12 challenged the generic findings for spent fuel storage impacts codified in Table B–1 and requested a rulemaking to remove this finding.[51] The petitioners raised the prospect of a fire at a nuclear power reactor's spent fuel pool and the resulting release of radioactive material to the environment. According to the petitioners' scenario, the spent fuel pool fire would be initiated by either an accident or a successful terrorist strike that would cause a partial or complete drain of the cooling water in the spent fuel pool. The petitioners requested the amendment of several of the regulations that are the subject of PRM–51–30 and PRM–51–31, namely, Table B–1, 10 CFR 51.23, 51.53(c), and 51.95(c).[52] The petitioners requested that the impacts of spent fuel storage be considered on a site-specific basis in license renewal cases, rather than generically, due to this potential threat. The Commission denied PRM–51–10 and PRM–51–12 and concluded that the risk of such a spent fuel pool fire was very low and that, given the safety and security requirements that applied to all plants, as well as the physical robustness of spent fuel pools, the environmental impacts of spent fuel pool storage could be handled generically.[53] The NRC's denial of PRM–51–10 and PRM–51–12 was upheld by the U.S. Court of Appeals for the Second Circuit.[54]

Finally, in a series of virtually identical petitions, docketed as PRM–51–14 through PRM–51–28, petitioners requested that the NRC rescind all regulations that reach generic environmental impact conclusions regarding severe reactor accidents and spent fuel pool accidents, which would include various provisions of Table B–1 and 10 CFR 51.53. The PRM–51–14 through PRM–51–28 petitions were filed shortly after the NRC issued its Near-Term Task Force (NTTF) report, "Recommendations for Enhancing Reactor Safety in the 21st Century, the NTTF Review of Insights from the Fukushima Dai-ichi Accident," dated July 12, 2011. The NTTF report provided the NRC staff's recommendations to enhance U.S. nuclear power plant safety following the March 11, 2011, Fukushima accident in Japan. After determining that the NTTF report did not constitute new and significant information and further, that the petitioners had provided insufficient technical or regulatory basis to amend any of the NRC regulations in question, the NRC denied the PRM–51–14 through PRM–51–28 petitions.[55]

IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated. For more information on accessing ADAMS, see the **ADDRESSES** section of this document.

Document	ADAMS Accession No./Web Link/**Federal Register** citation
CLI–99–22, Hydro Resources, Inc., July 23, 1999	*http://www.nrc.gov/reading-rm/doc-collections/commission/orders/1999/1999-022cli.pdf*
CLI–14–07, DTE Electric Co., et al., July 17, 2014	*http://www.nrc.gov/reading-rm/doc-collections/commission/orders/2014/2014-07cli.pdf*
"Comments by Environmental Organizations on Draft Waste Confidence Generic Environmental Impact Statement [GEIS] and Proposed Waste Confidence Rule and Petition to Revise and Integrate All Safety and Environmental Regulations Related to Spent Fuel Storage and Disposal," January 7, 2014.	ML14029A124, ML14029A169, ML14029A154

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[47] 73 FR at 46210; 2013 GEIS at E–38; NUREG–2157 at D–438 to D–440; COMSECY–13–0030, Enclosure 1 at 138.

[48] 73 FR 14946; March 20, 2008.

[49] 73 FR at 14947.

[50] *Id.* at 14948.

[51] 73 FR 46204; August 8, 2008.

[52] *Id.* at 46205.

[53] *Id.* at 46206–12.

[54] *New York* v. *U.S. Nuclear Regulatory Commission,* 589 F.3d 551 (2nd Cir. 2009).

[55] 80 FR 48235 (August 12, 2015).

Document	ADAMS Accession No./Web Link/**Federal Register** citation
COMSECY–13–0030, Staff Evaluation and Recommendation for Japan Lessons-Learned Tier 3 Issue on Expedited Transfer of Spent Fuel, November 12, 2013.	ML13273A601
COMSECY–13–0030 Vote Sheet, Staff Evaluation and Recommendation for Japan Lessons-Learned Tier 3 Issue on Expedited Transfer of Spent Fuel, April 8, 2014.	*http://www.nrc.gov/reading-rm/doc-collections/commission/comm-secy/2013/2013-0030comvtr.pdf*
Federal Register notice—Waste Confidence—Continued Storage of Spent Nuclear Fuel (proposed rule), September 13, 2013.	78 FR 56776
Federal Register notice—Environmental Effects of the Uranium Fuel Cycle, April 22, 1974.	39 FR 14188
Federal Register notice—Licensing and Regulatory Policy and Procedures for Environmental Protection; Uranium Fuel Cycle Impacts From Spent Fuel Reprocessing and Radioactive Waste Management, August 2, 1979.	44 FR 45362
Federal Register notice—Waste Confidence Decision, August 31, 1984.	49 FR 34658
Federal Register notice—Consideration of Environmental Impacts of Temporary Storage of Spent Fuel After Cessation of Reactor Operation, September 18, 1990.	55 FR 38472
Federal Register notice—Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, June 5, 1996.	61 FR 28467
Federal Register notice—Waste Confidence Decision Update, December 23, 2010.	75 FR 81037
Federal Register notice—Continued Storage of Spent Nuclear Fuel (final rule), September 19, 2014.	79 FR 56238
Federal Register notice—Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, June 20, 2013.	78 FR 37282
Federal Register notice—Revise and Integrate All Safety and Environmental Regulations Related to Spent Fuel Storage and Disposal, April 21, 2014.	79 FR 22055
Federal Register notice—Environmental Impacts of Spent Fuel Storage During Reactor Operation, May 1, 2014.	79 FR 24595
Federal Register notice—Environmental Impacts of Spent Fuel Storage During Reactor Operation, July 24, 2014.	79 FR 42989
Federal Register notice—New England Coalition on Nuclear Pollution; Denial of Petition for Rulemaking, March 20, 2008.	73 FR 14946
Federal Register notice—The Attorney General of Commonwealth of Massachusetts, The Attorney General of California; Denial of Petitions for Rulemaking, August 8, 2008.	73 FR 46204
Federal Register notice—Environmental Impacts of Severe Reactor and Spent Fuel Pool Accidents, August 12, 2015.	80 FR 48235
Makhijani, Arjun, Comments of the Institute for Energy and Environmental Research on the U.S. Nuclear Regulatory Commission's Proposed Waste Confidence Rule Update and Proposed Rule Regarding Environmental Impacts of Temporary Spent Fuel Storage.	ML091310195
NRC-National Academies of Science Report, "A Study of the Isolation System for Geologic Disposal of Radioactive Wastes," 1983.	ML033040264
NUREG–0116, "Environmental Survey of the Reprocessing and Waste Management Portions of the LWR Fuel Cycle," October 1976.	ML14098A013
NUREG–1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants," June 20, 2013.	ML13107A023
NUREG–2161, "Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark I Boiling Water Reactor," October 9, 2013.	ML13256A334
NUREG–2157, "Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel," September 2014.	ML14196A105 (vol. 1), ML14196A107 (vol. 2)
NUREG–2179, "Environmental Impact Statement for the Combined License (COL) for the Bell Bend Nuclear Power Plant (Draft Report for Comment)," April 2015.	ML15103A012 (vol. 1)
PRM–51–30, "Petition to Revise and Integrate All Safety and Environmental Regulations Related to Spent Fuel Storage and Disposal," submitted by Diane Curran on behalf of 34 environmental organizations, January 7, 2014.	ML14029A124
PRM–51–31, "Environmental Organizations' Petition to Consider New and Significant Information Regarding Environmental Impacts of High-Density Spent Fuel Storage and Mitigation Alternatives in Licensing Proceedings for New Reactors and License Renewal Proceedings for Existing Reactors and Duly Modify All NRC Regulations Regarding Environmental Impacts of Spent Fuel Storage During Reactor Operation," February 18, 2014.	ML14071A382

Document	ADAMS Accession No./Web Link/**Federal Register** citation
PRM–51–31, "Environmental Organizations' Amended Petition to Consider New and Significant Information Regarding Environmental Impacts of High-Density Spent Fuel Storage and Mitigation Alternatives in Licensing Proceedings for New Reactors and License Renewal Proceedings for Existing Reactors and Duly Modify All NRC Regulations Regarding Environmental Impacts of Spent Fuel Storage During Reactor Operation," June 26, 2014.	ML14177A660
Safety Goals for the Operations of Nuclear Power Plants; Policy Statement; Republication, August 21, 1986.	51 FR 30028
SRM–SECY–13–0030, "Staff Evaluation and Recommendation for Japan Lessons-Learned Tier 3 Issue on Expedited Transfer of Spent Fuel," May 23, 2014.	ML14143A360
WASH–1248, "Environmental Survey of the Uranium Fuel Cycle," April 1974.	ML14092A628

Dated at Rockville, Maryland, this 13th day of May, 2016.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2016–11820 Filed 5–18–16; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2016–BT–TP–0018]

RIN 1904–AD68

Energy Conservation Program: Test Procedure for Uninterruptible Power Supplies

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (DOE) is proposing to revise its battery charger test procedure established under the Energy Policy and Conservation Act of 1975, as amended. These proposed revisions, if adopted, will add a discrete test procedure for uninterruptible power supplies (UPSs) to the current battery charger test procedure.

DATES: *Meeting:* DOE will hold a public meeting on Thursday, June 9, 2016, from 9:30 a.m. to 12:30 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section V, "Public Participation," for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

Comments: DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than July 18, 2016. See section V, "Public Participation," for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585.

Any comments submitted must identify the NOPR for Test Procedure for Battery Chargers, and provide docket number EE–2016–BT–TP–0018 and/or regulatory information number (RIN) number 1904–AD68. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
2. *Email: UPS2016TP0018@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message.
3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.
4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Public Participation).

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov/#!docketDetail;D=EERE-2016-BT-TP-0018.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *battery_chargers_and_external_power_supplies@ee.doe.gov.*

In the Office of the General Counsel, contact Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9496. Email: *peter.cochran@hq.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule would incorporate by reference into 10 CFR part 430 the testing methods contained in the following commercial standard:

IEC 62040–3, "Uninterruptible power systems (UPS)—Method of specifying the performance and test requirements," Edition 2.0, Section 6 "UPS tests," and Annex J "UPS efficiency—Methods of measurement."

Copies of the IEC 62040–3 Ed. 2.0 standard are available from the American National Standards Institute, 25 W. 43rd Street, 4th Floor, New York, NY 10036 or at *http://webstore.ansi.org/.*

See section IV.M for further discussion of this standard.

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I. Authority and Background

Title III of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291, *et seq.*; "EPCA" or, "the Act") sets forth a variety of provisions designed to improve energy efficiency.[1] Part B [2] of title III, established the "Energy Conservation Program for Consumer Products Other Than Automobiles." Battery chargers are among the consumer products affected by these provisions. (42 U.S.C. 6295(u))

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) making representations about the efficiency of those products. Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA.

General Test Procedure Rulemaking Process

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA provides in relevant part that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) Finally, in any rulemaking to amend a test procedure, DOE must determine to what extent, if any, the proposed test procedure would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1))

Background

The "Uniform Test Method for Measuring the Energy Consumption of Battery Chargers" in appendix Y to subpart B of 10 CFR part 430 specifies the testing requirements for battery chargers. DOE last amended this test method with the publication of a test procedure final rule on June 1, 2011, which codified a new active-mode test procedure and amended the existing standby and off-mode test procedures. 76 FR 31750. As federal standards for battery chargers have yet to be finalized, DOE has not required manufacturers to submit energy efficiency data for their products tested under the battery charger test procedure.

DOE published a notice of proposed rulemaking (NOPR) on March 27, 2012, regarding energy conservation standards for battery chargers and external power supplies (March 2012 NOPR) where it proposed standards for battery chargers, including uninterruptible power supplies (UPSs). 77 FR 18478

Following the publication of the 2011 battery charger test procedure final rule and the March 2012 NOPR, DOE explored whether to regulate UPSs as "computer systems." *See, e.g.,* 79 FR 11345 (Feb. 28, 2014) (proposed coverage determination); 79 FR 41656 (July 17, 2014) (computer systems framework document). DOE received a number of comments in response to those documents (and the related public meetings) regarding testing of UPSs, which are discussed in this NOPR. At the same time, DOE received questions and requests for clarification regarding the testing, rating, and classification of battery chargers.

As part of the continuing effort to establish federal efficiency standards for battery chargers and to develop a clear and widely applicable test procedure, DOE published a notice of data availability (May 2014 NODA) on May 15, 2014. 79 FR 27774. This NODA sought comments from stakeholders concerning the repeatability of the test procedure when testing battery chargers with several consumer configurations and on the future market penetration of new battery charging technologies that may require revisions to the battery charger test procedure. DOE also sought comments on the reporting requirements for manufacturers attempting to comply with the California Energy Commission's (CEC's) efficiency standards for battery chargers in order to understand certain data discrepancies in the CEC database. These issues were discussed during DOE's NODA public meeting on June 3, 2014.

Based upon discussions from the May 2014 NODA public meeting and written comments submitted by various stakeholders, DOE published a NOPR (August 2015 NOPR) to revise the current battery charger test procedure on August 6, 2015. 80 FR 46855. DOE received a number of stakeholder comments on the August 2015 NOPR and the computer systems framework document regarding regulation of battery chargers including UPSs. After considering these comments, DOE reconsidered its position and found that since a UPS meets the definition of a battery charger, it is more appropriate to regulate UPSs as part of the battery charger rulemaking. Therefore, in today's notice DOE proposes to amend the battery charger test procedure to include specific test provisions for UPSs.

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[1] All references to EPCA refer to the statute as amended through the Energy Efficiency Improvement Act, Public Law 114–11 (April 30, 2015).

[2] For editorial reasons, Part B was redesignated as Part A upon incorporation into the U.S. Code (42 U.S.C. 6291–6309, as codified).

II. Synopsis of the Notice of Proposed Rulemaking

This proposal seeks to add provisions for testing UPSs to the battery charger test procedure. Specifically, DOE is proposing to incorporate by reference specific sections of IEC 62040–3 Ed 2.0 with additional instructions, into the current battery charger test procedure published at appendix Y to subpart B of 10 CFR part 430. Additionally, this proposal seeks to add formal definitions for uninterruptible power supply, voltage and frequency dependent UPSs, voltage independent UPSs, voltage and frequency independent UPSs, energy storage systems, normal mode and reference test load to appendix Y to subpart B of 10 CFR part 430 and revise the compliance certification requirements for battery chargers published at 10 CFR 429.39.

III. Discussion

In response to the August 2015 NOPR, DOE received written comments from 18 interested parties, including manufacturers, trade associations, standards development organizations and energy efficiency advocacy groups. Table III–1 below lists only the entities that commented on the proposed exclusion of UPSs, as battery chargers. These comments are discussed in further detail below. The full set of comments on the battery charger test procedure NOPR can be found at: *http://www.regulations.gov/#!docketBrowser;rpp=25;po=0;dct=PS;D=EERE-2014-BT-TP-0044.*

TABLE III–1—INTERESTED PARTIES THAT PROVIDED WRITTEN COMMENTS ON PROPOSED EXCLUSION OF UPSS AS BATTERY CHARGERS IN THE AUGUST 2015 NOPR

Commenter	Acronym	Organization type/affiliation	Comment No. (docket reference)
California Investor Owned Utilities	CA IOUs	Utility Association	21
Natural Resources Defense Council, Appliance Standards Awareness Project, and Northwest Energy Efficiency Alliance.	NRDC, ASAP, and NEEA	Energy Efficiency Advocacy Groups.	20
Schneider Electric	Schneider Electric	Manufacturer	12

Similarly, in response to the computer systems framework document, DOE received written comments from 9 interested parties, including manufacturers, trade associations, standards development organizations, and energy efficiency advocacy groups. Table III–2 below lists only the entities that commented on the inclusion of UPSs in the computer systems rulemaking. These comments are also discussed in detail below. The full set of comments on the computer systems framework document can be found at: *http://www.regulations.gov/#!docketBrowser;rpp=25;po=0;dct=PS;D=EERE-2014-BT-STD-0025.*

TABLE III–2—INTERESTED PARTIES THAT PROVIDED WRITTEN COMMENTS ON THE INCLUSION OF UPSS IN THE COMPUTER SYSTEMS FRAMEWORK DOCUMENT

Commenter	Acronym	Organization type/affiliation	Comment No. (docket reference)
Information Technology Industry Council	ITI	Trade Association	10
National Electrical Manufacturers Association	NEMA	Trade Association	15
Schneider Electric	Schneider Electric	Manufacturer	08

A. Covered Products and Scope

DOE has proposed several different methods of handling UPSs throughout the course of the battery chargers and computer systems rulemakings. Originally, DOE had proposed energy conservation standards for UPSs as part of the 2012 battery chargers NOPR. DOE proposed that UPSs be part of product class 10a and 10b and be regulated using the same energy consumption metric (annual unit energy consumption or "UEC") and test procedure as all other battery chargers, using a usage profile assumption for those product classes that is typical of UPSs. 77 FR 18478. However, in 2014, DOE proposed that UPSs be included as part of the proposed coverage determination for computer systems. As outlined in the computer systems framework document, DOE sought stakeholder feedback of its consideration of referencing IEC 62040–3 Edition 2.0, "Uninterruptible power systems (UPS)—Method of specifying the performance and test requirements", March 2011 (IEC 62040–3 Ed. 2.0), as the test procedure for UPSs with the inclusion of additional instructions from ENERGY STAR UPS Version 1.0, "ENERGY STAR Program Requirements for Uninterruptible Power Supplies," Rev. July 2012 (ENERGY STAR UPS V. 1.0). This test procedure would measure the average conversion efficiency of a UPS with test loads connected to the UPS.

DOE received comments on the battery charger test procedure NOPR from Schneider Electric and the CA IOUs opposing the exclusion of UPSs from the scope of the battery charger test procedure. These stakeholders highlighted the usage of the current battery charger test procedure by CEC to regulate UPSs under the state's own battery charger energy conservation program. (Docket No. EERE–2014–BT–TP–0044, Schneider Electric, No, 12 at p. 1, Docket No. EERE–2014–BT–TP–0044, CA IOUs, No. 21 at p. 3) Their comments emphasize that UPSs are a type of backup battery charger and should remain in the scope of the battery charger test procedure. Similarly, NRDC, ASAP, and NEEA submitted comments recommending that battery backup systems be included in the scope of the battery charger test procedure. Further, NRDC, ASAP, and NEEA recommended that DOE exclude battery backup systems as a covered product in order to allow the CEC to continue to enforce its standards for these products until the computer systems standards become effective. (Docket No. EERE–2014–BT–TP–0044, NRDC, ASAP, and NEEA, No. 20, p. 2)

After considering all related stakeholder comments, DOE believes that it is most appropriate to include UPSs within the scope of the battery charger test procedure. Although UPSs may provide various types of power conditioning and monitoring functionality depending on their architecture and input dependency, they primarily maintain the fully-charged state of lead acid batteries with relatively high self-discharge rates so that in the event of a power outage, they are able to provide backup power instantly to the connected load. Maintaining the lead acid battery therefore directly affects a UPS's overall energy efficiency. In 10 CFR 430.2, a battery charger is defined as a device that charges batteries for consumer products. Because UPSs that are in scope of this rulemaking have the primary task of maintaining a charged lead acid battery, DOE concludes that UPSs meet the definition of a battery charger and, as such, should be considered within the scope of the battery charger test procedure.

UPSs are defined in IEC 62040–3 Ed. 2.0 as a combination of convertors, switches and energy storage devices (such as batteries), constituting a power system for maintaining continuity of load power in case of input power failure. Today, DOE proposes to adopt this definition for UPSs; that is, only battery chargers that meet the above-stated definition of a UPS are subject to the testing requirements proposed in this NOPR. While UPSs with a variety of architectures, input dependency and input/output characteristics may meet IEC's definition, DOE is further proposing to limit the applicability of this test procedure to only those that have an AC output to help limit the scope of the UPS test procedure. DOE emphasizes that this proposal to include specific test provisions for UPSs in the battery charger test procedure only applies to products that meet the above stated definition of a UPS and have an AC output.

DOE requests comment on the proposal to include specific test provisions for UPSs, as defined above, in the battery charger test procedure.

B. Existing Test Procedures and Standards Incorporated by Reference

DOE is proposing to add specific testing provisions for UPSs in the battery charger test procedure, as the Department believes that the specifications in the current battery charger test procedure are not appropriate for UPSs. Most battery chargers have four modes of operation: (1) Active mode (charging batteries that are at various stages of depletion); (2) maintenance mode (maintaining fully charged batteries); (3) standby mode (plugged in with no battery connected to charge and all manual on-off switches turned on); and (4) off mode (plugged in with no battery connected to charge and all manual on-off switches turned off). The current battery charger test procedure measures energy consumption in these modes because most battery chargers generally spend a significant amount of time in all four modes of operation. Most battery chargers are used to charge the batteries of products that are designed to be regularly operated using battery power. This makes the current test procedure output metrics appropriate for representing the energy consumption of most kinds of battery chargers during a representative average use cycle.

In contrast, the current test procedure, which measures energy consumption of a battery charger as it charges a fully discharged battery, is inappropriate for a UPS since a UPS rarely has a fully discharged battery. The UPS's battery is only infrequently depleted during a power outage when a connected load discharges the energy stored within the UPS's battery in order to continue normal operation of the powered product. Likewise, it is only after power has been restored following an outage that the UPS charges depleted batteries. The vast majority of the time a UPS provides a small amount of charge necessary to maintain fully charged batteries and also delivers power to a connected load. Therefore, in order to accurately capture the energy consumption and energy efficiency of the normal operation of a UPS, the test procedure should measure the energy consumption of maintaining a fully charged battery and the conversion losses associated with delivering load power.

The following subsections discuss each mode of operation that is currently included within the DOE battery charger test procedure, and the rationale for why each mode is not applicable to UPSs.

1. *Active mode:* Section 2.1 of appendix Y to subpart B of 10 CFR part 430 defines active mode or charge mode as a state in which the battery charger system is connected to the main electricity supply, and the battery charger is delivering current, equalizing cells, and performing other one-time or limited-time functions in order to bring the battery to a fully charged state. In active mode, the battery charger is charging a battery that is partially or fully discharged. However, unlike other battery chargers, UPSs seldom have a fully-discharged battery. UPSs primarily maintain the fully-charged state of their internal batteries so that in the event of a power outage, the internal batteries are able to instantly provide backup power to a connected load. However, power outages are infrequent in the United States and therefore a UPS rarely switches to backup power and consumes its stored energy. Because the battery is maintained in a fully charged state during the majority of a UPS's service life, UPSs are almost never required to enter active mode to replenish a depleted battery. Consequently, it would not be appropriate to measure the active mode energy consumption of a UPS by the current battery charger test procedure because the resulting measured energy would not be representative for a UPS in typical use as required by 42 U.S.C. 6293(b)(3). Two other outputs of the current test procedure, battery capacity and charge time, are related to measuring the energy consumption in active mode. Because the active mode is generally not common for a UPS, measuring battery capacity and charge time would typically not be representative.

2. *Maintenance mode:* Once the batteries have been fully charged, a battery charger typically enters a maintenance mode intended to maintain the fully charged state of batteries with a finite self-discharge rate, while protecting it from overcharging. Although UPSs spend the majority of their service life in this mode, UPSs also continuously provide power to a connected load. This aspect is missing from the current battery charger test procedure, which does not require a load to be connected to the battery charger—only to a battery. UPSs are

almost always connected to a load, such as a computer, because the primary purpose of a UPS is to provide power in the event of an unexpected power outage. Leaving the UPS unconnected to a load would not be representative of typical usage, and the resulting measured energy consumption would not be representative, as required by 42 U.S.C. 6293(b)(3).

3. *Standby and off modes:* The current battery charger test procedure requires that, in addition to active and maintenance mode, a battery charger's energy consumption be measured in two other modes of operation; standby and off mode. In standby mode, the battery charger remains connected to the main electricity supply with the battery itself disconnected and all manual on-off switches (if applicable) turned on. In off mode, the battery charger remains connected to the main electricity supply with the battery itself disconnected and all manual on-off switches (if applicable) turned off. UPSs never experience these modes of operation in typical use since they are always connected to mains power and have batteries attached in order to service their loads in the event of a power outage. Therefore, testing UPSs in standby and off modes would not be representative of typical usage, and the resulting measured energy consumption would not be representative, as required by 42 U.S.C. 6293(b)(3).

As each of the modes of operation discussed above is not directly applicable to UPSs, DOE proposes to amend the current battery charger test procedure to add auxiliary instructions for testing a UPS that will better capture the device's real world energy performance. More specifically, DOE proposes to define "normal mode" as a mode of operation where the UPS maintains a battery while simultaneously powering a connected load.

In order to measure energy consumption during normal mode, DOE proposes to incorporate by reference Section 6 and Annex J of IEC 62040–3 Ed. 2.0 in the battery charger test procedure. This test method requires that power consumption of a UPS be measured in normal mode with reference test loads equal to 25%, 50%, 75%, and 100% of the unit's rated power. Each of these individual efficiency data points is then weighted by a coefficient that is specific for each UPS architecture and combined to determine the overall average efficiency of the unit. DOE is aware that the IEC standard is under revision and will consider amending this test procedure to further harmonize with any finalized revision of this industry test procedure. Furthermore, DOE proposes to include additional instructions, some of which are provided in the ENERGY STAR UPS V. 1.0 specification. Discussion of these additional instructions is found in sections III.C and III.D of this proposed rule.

DOE requests stakeholder comments on the type of changes that are being considered for the revised IEC 62040–3 standard and how it may impact the test procedure proposed today.

Because DOE is proposing to adopt testing requirements for UPSs from IEC 62040–2 Ed. 2.0 with additional instructions where appropriate, the following sections discuss these proposed requirements including definitions, test conditions, battery and product configuration, average power and efficiency calculations, output metric, effective date and compliance requirements, sampling plan and certification reports.

C. Definitions

DOE proposes to include the following definitions, in alphabetical order, in section 2 of appendix Y to subpart B of 10 CFR part 430. DOE requests comment on all proposed definitions, particularly those that are not defined in existing industry standards.

1. Energy Storage System

DOE proposes the following definition for an Energy Storage System of a UPS: "*Energy storage system* is a system consisting of single or multiple devices designed to provide power to the UPS inverter circuitry."

2. Normal Mode

Normal mode for UPSs is similar to the maintenance mode of other battery chargers as defined in appendix Y to subpart B of 10 CFR part 430 in that the UPS maintains the fully charged state of batteries with a finite self-discharge rate, while protecting it from overcharging. However, in addition to maintaining a battery, a UPS in normal mode also continuously provides power to a load. In order to highlight this distinction, DOE proposes the following definition for the normal mode of operation for a UPS.

"*Normal mode* is a mode of operation for a UPS in which:

(i) The UPS provides required output power to the connected load without switching to battery power,

(ii) the energy storage system is being maintained at full charge, and

(iii) the load connected to the UPS is within the UPS's specified power rating."

3. Reference Test Load

To describe the load that is used for testing UPSs, DOE proposes the following definition for reference test load.

"*Reference test load* is a load or condition with a power factor of greater than 0.99 in which the AC output socket of the UPS delivers the active power (W) for which the UPS is rated."

While IEC 62040–3 Ed. 2.0 also provides a definition for reference test load, it does not explicitly address whether such a test load is linear or non-linear in nature. Similarly, section 4.2 of ENERGY STAR UPS V. 1.0 calls for the reference test load to be resistive without clearly defining the term 'resistive'. DOE's proposed definition properly characterizes the test load to be used for UPS testing and removes ambiguity by requiring the test load to be linear and resistive through the power factor requirement.

4. Uninterruptible Power Supplies

DOE proposes the following definition for a UPS:

"*Uninterruptible power supply* or *UPS* means a battery charger consisting of a combination of convertors, switches and energy storage devices, constituting a power system for maintaining continuity of load power in case of input power failure."

DOE is also proposing to include definitions for voltage independent, voltage and frequency dependent, and voltage and frequency independent UPS architectures based on the definitions from section 1.0 of ENERGY STAR UPS V. 1.0 to differentiate between different UPS load ratings. The proposed definitions are as follows:

"*Voltage and frequency dependent UPS* or *VFD UPS* means a UPS that produces an alternating current (AC) output where the output voltage and frequency are dependent on the input voltage and frequency. This UPS architecture does not provide corrective functions like those in voltage independent and voltage and frequency independent systems."

A typical VFD UPS connects the protected load directly to the main electricity supply without performing any voltage or frequency conditioning. In the event the input voltage or frequency fails or simply falls outside a manufacturer-specified range, the VFD UPS shifts the source of the output power from the main electricity supply to the battery power by detecting the fault condition and turning on the internal DC to AC inverter circuitry. Because the detection of a fault condition and the subsequent turning on of the DC to AC inverter circuitry requires a finite amount of time, the switchover process is not instantaneous and generally requires tens of milliseconds. This UPS architecture may therefore not be suitable for protecting loads that are sensitive to brief dips and surges in the input power supply.

"*Voltage independent UPS* or *VI UPS* means a UPS that produces an AC output within a specific tolerance band that is independent of under-voltage or over-voltage variations in the input voltage. The output frequency of a VI UPS is dependent on the input frequency, similar to a voltage and frequency dependent system."

A VI UPS functions similarly to a VFD UPS in that it also powers the protected load using the main electricity supply. However, unlike a VFD UPS, a VI UPS is able to perform minor conditioning of the input voltage when it is marginally out of tolerance without switching to battery power. A VI UPS typically achieves this by using a Buck-boost transformer, a component that can detect dips and surges in the input voltage and adjust its winding ratio such that the output voltage remains constant. However, if the perturbation in the input voltage is greater than a predetermined range set by the manufacturer, the VI UPS will switch to the battery power similar to a VFD UPS. A VI UPS is unable to protect the load against fluctuations in the input frequency without switching to battery power.

"*Voltage and frequency independent UPS* or *VFI UPS* means a UPS where the device remains in normal mode producing an AC output voltage and frequency that is independent of input voltage and frequency variations and protects the load against adverse effects from such variations without depleting the stored energy source. The input voltage and frequency variations through which the UPS must remain in normal mode are as follows:

i. ±10% of the rated input voltage or the tolerance range specified by the manufacturer, whichever is greater; and

ii. ±2% of the rated input frequency or the tolerance range specified by the manufacturer, whichever is greater."

A VFI UPS consists of an AC to DC converter that charges the UPS battery and a DC to AC inverter that converts the DC battery voltage back to AC in order to power the connected load. However, unlike a VFD or a VI UPS where the DC to AC inverter is turned on only when a fault condition is detected, the inverter in a VFI UPS is always in operation ensuring that the connected load is always powered through the battery power, which is continuously charged using main electricity supply. The use of a VFI device is particularly important when the protected load is sensitive to the slightest change in input voltage and frequency.

To help manufacturers determine whether a UPS is properly considered to be VFD, VI, or VFI, DOE is including tests to verify the input dependency of the UPS as follows: VI input dependency may be verified by performing the steady state input voltage tolerance test in section 6.4.1.1 of IEC 62040–3 Ed. 2.0 and observing that the output voltage remains within the specified limit during the test. VFD input dependency may be verified by performing the AC input failure test in section 6.2.2.7 of IEC 62040–3 Ed. 2.0 and observing that, at a minimum, the UPS switches from normal mode of operation to battery power while the input is interrupted. VFI input dependency may be verified by performing the steady state input voltage tolerance test and the input frequency tolerance test specified in sections 6.4.1.1 and 6.4.1.2 of IEC 62040–3 Ed. 2.0 and observing that, at a minimum, the output voltage and frequency remain within the specified output tolerance band during the test. These tests may be performed to determine the input dependency supported by the test unit.

D. Test Conditions

Although a majority of the test conditions are adopted from the IEC 62040–3 Ed 2.0 standard, DOE proposes certain supplementary instructions for the test conditions in appendix Y to subpart B of 10 CFR part 430 in order to eliminate the possibility of ambiguity. DOE requests comment on the proposed test conditions.

1. Accuracy and Precision of Measuring Equipment

In this NOPR, DOE proposes that the power meter and other equipment used during the test procedure must provide true root mean square (r. m. s.) measurements of the active input and output power, with an uncertainty at full rated load of less than or equal to 0.5 percent at the 95 percent confidence level notwithstanding that voltage and current waveforms can include a harmonic component. Further, DOE proposes that the power meter and other equipment must measure input and output values simultaneously.

2. Environmental Conditions

IEC 62040–3 Ed 2.0 requires that the ambient temperature must be in the range of 20 °C to 30 °C. In order to ensure repeatability, DOE proposes to increase the precision required for ambient temperature measurements, while keeping the same range. As a result, the ambient temperature must be 20.0 °C to 30.0 °C (*i.e.*, increasing the required precision by one decimal place) and the measurement must include all uncertainties and inaccuracies introduced by the temperature measuring equipment. Extending the precision of IEC's ambient temperature range requirement by one decimal place allows DOE to minimize rounding errors and avoid scenarios where a temperature of 19.6 °C would be rounded to 20 °C during testing and potentially provide higher efficiency usage values than those obtained at or above 20.0 °C. The proposal also requires that the tests be carried out in a room with an air speed immediately surrounding the unit under test (UUT) of less than or equal to 0.5 m/s. There must be no intentional cooling of the UUT such as by use of separately powered fans, air conditioners, or heat sinks. The UUT must be tested on a thermally non-conductive surface.

3. Input Voltage and Frequency

DOE proposes that the AC input voltage to the UUT be within 3 percent of the highest rated voltage and the frequency be within 1 percent of the highest rated frequency of the device.

E. Battery Configuration

Section J.2.2 of the IEC 62040–3 Ed. 2.0 standard requires that the UPS operate in normal mode during testing and that the transfer of energy to and from the energy storage system be prevented during the test. Further, IEC recommends disconnecting the energy storage system to prevent such transfer of energy. While this approach is appropriate for measuring the losses within the inverter components, disconnecting the energy storage system prevents the capturing of losses in the battery charger components of the UPS. UPSs covered under today's proposed scope most commonly use lead acid batteries as their energy storage systems, and these batteries have a relatively high self-discharge rate. Over time, these UPSs expend a considerable amount of cumulative energy countering the self-discharge of fully charged lead acid batteries in real life use under normal mode operation. Disconnecting the battery during testing as recommended by IEC will fail to account for this additional energy spent by the battery charging components. Because DOE intends to capture a complete picture of the energy performance of UPSs as part of today's rulemaking, DOE proposes that the energy storage systems must remain connected throughout the test.

Batteries in UPSs must remain fully charged, standing by to provide backup power in the event of a power failure. Battery charging requirements must therefore be standardized such that the batteries are fully charged during testing and representative of the state of a UPS in real life use. Therefore, DOE proposes to standardize battery charging requirements for UPSs by including the following instructions in section 4.2.1 of appendix Y to subpart B of 10 CFR part 430. These requirements, which ensure that the battery is fully charged prior to testing, specify charging the battery for an additional 5 hours after the UPS has indicated that it is fully charged, or, if the product does not have a battery indicator but the user manual specifies a time, charging the battery for 5 hours longer than the manufacturer's estimate. Finally, the proposal requires charging the battery for 24 hours if the UPS does not have an indicator or an estimated charging time.

F. Product Configuration

For configuring UPSs for testing, DOE proposes to incorporate by reference Appendix J.2 of IEC 62040–3 Ed 2.0 in section 4.2.1 of the proposed appendix Y to subpart B of the 10 CFR part 430. In addition to the IEC test method, DOE proposes to include additional requirements for UPS operating mode conditions and energy storage system derived from ENERGY STAR UPS V. 1.0. DOE is not considering including requirements for back-feeding, which are specified in ENERGY STAR UPS V. 1.0 because back-feeding will not apply to the UPSs that are in the proposed scope of this rulemaking.

G. Average Power and Efficiency Calculation

1. Average Power

DOE proposes two different methods for calculating average power so that manufacturers have the option of using a method better suited to the testing equipment already available at their disposal without have to purchasing new equipment. DOE believes this will reduce testing burden. DOE proposes to specify these calculation methods in section 4.3.1 of the proposed appendix Y to subpart B of 10 CFR part 430. The first proposed method of calculating average power is to divide accumulated energy (E_i) by the specified period for each test (T_i) and recording the accumulated energy (E_i) in kWh. For this method, the average power is calculated using the following equation:

$$P_{avg} = \frac{E_i}{T_i}$$

Additionally, DOE proposes a second method to calculate average power by sampling the power at a rate of at least 1 sample per second and computing the arithmetic mean of all samples over the time period specified for each test (T_i). For this method, the average power (P_{avg}) is calculated using the following equation:

$$P_{avg} = \frac{1}{n}\sum_{i=1}^{n} P_i$$

Where P_{avg} represents average power, P_i represents measured power during a single measurement (i), and n represents total number of measurements.

DOE requests comment on the proposed two different methods of calculating average power. DOE requests comment on the comparability of the results from the two methods.

2. Efficiency

DOE proposes to calculate the efficiency of UPSs at each loading point as specified in section J.3 of IEC 62040–3 Ed 2.0. DOE also proposes additional requirements from ENERGY STAR UPS V. 1.0 for the purpose of ensuring repeatable and reproducible tests. ENERGY STAR UPS V. 1.0 specifies requirements for ensuring the unit is at steady state and calculating the efficiency measurements. DOE also proposes to require that the input dependency of the UPS be determined as described in section III.C.4 of this NOPR. The proposed requirements are included in section 4.3 of the proposed appendix Y to subpart B of 10 CFR part 430.

H. Output Metric

To capture the energy efficiency of a UPS, DOE proposes that the device be tested in normal mode. DOE further proposes to use an average load adjusted efficiency metric, rounded to one tenth of a percentage point, as the final output of this UPS test procedure. DOE's proposed output metric for UPSs matches the output metric utilized by ENERGY STAR UPS V. 1.0. DOE is also proposing to adopt the load weightings specified in ENERGY STAR UPS V. 1.0 for calculating load adjusted average efficiency of UPSs. These load weightings vary based on the ratio of the reference test load to the full rated load of the device, the UPS architecture and the output power rating of a UPS.

These weightings are widely used by manufacturers to certify their UPSs to ENERGY STAR specifications and indicate the typical amount of time a UPS spends at each loading point. Therefore, DOE believes the use of load weightings allow the proposed final metric to capture the real world energy performance of UPSs accurately and representatively. The requirements for calculating the final metric, shown in Table III–3, are proposed to be incorporated in section 4.3.5 of appendix Y to subpart B of 10 CFR part 430. The proposed equation to calculate the average load adjusted efficiency of UPSs is as follows:

$$\begin{aligned} Eff_{avg} = {} & (t_{25\%} \times Eff|_{25\%}) + (t_{50\%} \times Eff|_{50\%}) \\ & + (t_{75\%} \times Eff|_{75\%}) + (t_{100\%} \times Eff|_{100\%}) \end{aligned}$$

Where:

Eff_{avg} = average loading-adjusted efficiency

$t_{n\%}$ = proportion of time spent at the particular $n\%$ of the reference test load

$Eff_{n\%}$ = efficiency at the particular $n\%$ of the reference test load

TABLE III–3—UPS LOAD WEIGHTINGS FOR CALCULATING AVERAGE EFFICIENCY

Rated output power (W)	Input dependency characteristic	Portion of time spent at reference load			
		25%	50%	75%	100%
P ≤ 1500 W	VFD	0.2	0.2	0.3	0.3
	VI or VFI	0	0.3	0.4	0.3
P > 1500 W	VFD, VI, or VFI	0	0.3	0.4	0.3

EISA 2007 amended EPCA to require DOE to implement a standby and off mode energy consumption measurement, if technically feasible, in new or existing test procedures that do not have this measurement. (42 U.S.C. 6295(gg)(2)(A)) EISA 2007 also requires any final rule establishing energy conservation standards for a covered product, adopted after July 1, 2010, to incorporate standby mode and off mode energy use into a single amended or new standard, if feasible. (42 U.S.C. 6295(gg)(3)(A))

EPCA defines the three modes that consumer products can be in as: (1) Active mode, (2) standby mode, and (3) off mode. (42 U.S.C. 6295(gg)(1)) DOE incorporated EPCA's definitions for active, standby, and off modes into 10 CFR 430.2. Each of these definitions requires that the product be "connected to a main power source." DOE is proposing a test procedure under which UPSs would be tested in normal mode, the only mode that a UPS is in when connected to a power source, except in the rare occasions that it is in "charge mode." EPCA requires that any prescribed or amended test procedure shall be designed to produce test results which measure energy efficiency or energy use during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(3)). As discussed in section III.B, a UPS is almost never in charge mode, and therefore measured energy for this mode would not be representative for a UPS in typical use as required by 42 U.S.C. 6293(b)(3). Thus, measuring the energy use of a UPS in normal mode effectively captures the energy used during the entirety of the time that a UPS is connected to mains power. As such, the test procedure proposed here incorporates measurement of energy use during active, standby, and off modes, as EPCA defines those terms.

DOE requests comment on the proposed output metric for UPSs.

I. Effective Date and Compliance of Test Procedure

If adopted, the effective date for this UPS test procedure would be 30 days after publication of the test procedure final rule in the **Federal Register**. At that time, the new metrics and any other measure of energy performance which depends on these metrics may be represented pursuant to the final rule. On or after 180 days after the date of publication of the test procedure final rule, any such representations, including those made on marketing materials and product labels would be required to be based upon results generated under the final test procedure.

J. Sampling Plan for Determination of Certified Rating

For any covered product, manufacturers are required to determine the represented value, which includes the certified rating, for each basic model of the product in accordance with the DOE test procedure. Because today's proposed test procedure for UPSs and resulting metric differs from other battery chargers, DOE proposes that UPSs would certify the average load adjusted efficiency metric (Eff_{avg}) described in section III.H, as the representative value of efficiency for UPSs. In order to determine a rating for certifying compliance or making energy use representations, DOE typically requires manufacturers to test each basic model in accordance with the applicable DOE test procedure and apply the appropriate sampling plan. DOE proposes that the sampling provisions and certified rating requirements for battery chargers be applicable to UPSs.

K. Certification Reports

In addition to the requirements specified in 10 CFR 429.12, which are applicable to each basic model of a covered product, DOE proposes the following additional product specific public information be included in the battery charger certification report for UPSs in 10 CFR 429.39:

1. Active power, in Watts, and apparent power, in Volt-Amperes, of the UPS
2. Rated input and output voltage, in Volts, of the UPS
3. Efficiency at 25 percent, 50 percent, 75 percent, and 100 percent, and average normal mode loading efficiency of UPS

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute "significant regulatory actions" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IFRA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://energy.gov/gc/office-general-counsel.*

DOE reviewed the test procedure considered in this proposed rule under the provisions of the Regulatory Flexibility Act (RFA) and the policies and procedures published on February 19, 2003. DOE has concluded that the proposed rule would not have a significant impact on a substantial number of small entities. The factual basis for this certification is as follows.

The Small Business Administration (SBA) considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. These size standards and codes are established by the North American Industry Classification System (NAICS). The threshold number for NAICS classification code 335999, which applies to "all other miscellaneous electrical equipment and component manufacturing" and includes UPSs, is 500 employees.

To estimate the number of companies that could be small business manufacturers of the equipment affected by this rulemaking, DOE conducted a market survey using available public information to identify potential small manufacturers. DOE's research involved reviewing the SBA database, marketing research tools (*i.e.,* Hoover's reports), and company profiles on public Web sites (*i.e.,* LinkedIn and Glassdoor) to create a list of all domestic small business manufacturers of battery chargers affected by this rulemaking. DOE identified 12 manufacturers of battery chargers as domestic small business manufacturers.

To determine the costs of the proposed test procedure on small manufacturers, DOE obtained quotations from two laboratories for testing UPSs and found the range to be from $1,400 to $2,000. While DOE performed the analysis using the highest quotation it received to estimate the maximum possible testing cost, DOE understands that a majority of UPS manufacturers are able to perform these tests with their own testing equipment. UPS manufacturers can significantly reduce testing costs by conducting their own testing instead of using third party labs to test their products. Under the proposed test procedure, manufacturers would be required to test each UPS basic model individually; that is, a minimum of two units per basic model. DOE estimated the average number of basic models produced per manufacturer to be six. DOE determined the average number of basic models per manufacturer by examining product listings, product features, and model names from DOE's Compliance Database, EPA's ENERGY STAR,[3] and retailer Web sites to estimate the total number of basic models in the industry. DOE then divided the estimation by the total number of UPS manufacturers identified to find an average number of basic models per manufacturer. Therefore, to test two units of each basic model at a cost of $2,000 per unit, the average total cost of testing is $24,000 per manufacturer. From Hoovers, DOE estimated the average revenue of a small business manufacturer of battery chargers to be $22.2M. That is, the total cost of testing is approximately 0.11 percent of the average annual revenue.

Based on this analysis, DOE concludes that this proposed rule would not have a significant economic impact on a substantial number of small entities. DOE will provide its certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

DOE seeks comment on whether the proposed test procedure changes will have a significant impact on a substantial number of small entities.

C. Review Under the Paperwork Reduction Act of 1995

If DOE adopts energy conservation standards for battery chargers, manufacturers will be required to certify that their products comply with those standards. In certifying compliance, manufacturers must test their products according to the applicable DOE test procedure, including any amendments adopted for that test procedure. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, and is proposing specific requirements for battery chargers in this rule. *See* 10 CFR part 429, subpart B. The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. This information collection was renewed in January 2015 to include certification requirements for battery chargers. 80 FR 5099 (January 30, 2015). Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Manufacturers would not be required to submit a certification report until such time as compliance with an energy conservation standard is required.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for UPSs. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would amend the existing test procedures without affecting the amount, quality or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

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[3] ENERGY STAR. Energy Star Certified Products. Last accessed May 4, 2015. <*http://www.energystar.gov/*>.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://energy.gov/gc/office-general-counsel*. DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights" 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

The proposed regulatory action to amend the test procedure for measuring the energy efficiency of UPSs is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

This proposed rule incorporates testing methods contained in Section 6 and Annex J of the IEC 62040–3 Ed. 2.0, "Uninterruptible power systems (UPS)—Method of specifying the performance and test requirements" standard. DOE has evaluated this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA, (*i.e.*, that they were developed in a manner that fully provides for public participation, comment, and review). DOE will consult with the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

M. Description of Material Incorporated by Reference

The proposed rule incorporates Section 6 and Annex J of the IEC 62040–3 Ed. 2.0, "Uninterruptible power systems (UPS)—Method of specifying the performance and test requirements" standard. This standard is used to specify the testing requirements for UPSs and is available from the American National Standards Institute, 25 W. 43rd Street, 4th Floor, New York, NY 10036 or at *http://webstore.ansi.org/*.

V. Public Participation

A. Attendance at Public Meeting

The time, date and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov*.

Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: *Regina.Washington@ee.doe.gov* so that the necessary procedures can be completed.

DOE requires visitors to have laptops and other devices, such as tablets, checked upon entry into the building. Any person wishing to bring these devices into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing these devices, or allow an extra 45 minutes to check in. Please report to the visitor's desk to have devices checked before proceeding through security.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific states and U.S. territories. Driver's licenses from the following states or territory will not be accepted for building entry and one of the alternate forms of ID listed below will be required. DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, American Samoa, Arizona, Louisiana, Maine, Massachusetts, Minnesota, New York, Oklahoma, and Washington. Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the states of Minnesota, New York or Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government issued Photo-ID card.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=26&action=viewlive*. Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this proposed rule.

Submitting comments via regulations.gov. The regulations.gov Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to *regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. DOE requests comment on the proposal to include specific test provisions for UPSs in the battery charger test procedure. See section III.A for further detail.

2. DOE requests stakeholder comments on the type of changes that are being considered for the revised IEC 62040–3 standard and how it may impact the test procedure proposed today. See section III.B for further detail.

3. DOE requests comment on all proposed definitions, particularly those that are not defined in existing industry standards. See section III.C for further detail.

4. DOE requests comment on the proposed test conditions. See section III.D for further detail.

5. DOE requests comment on the proposed two different methods of calculating average power. DOE requests comment on the comparability of the results from the two methods. See section III.G for further detail.

6. DOE requests comment on the proposed output metric for UPSs. See section III.H for further detail.

7. DOE seeks comment on whether the proposed test procedure changes will have a significant impact on a substantial number of small entities. See section IV.B for further detail.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects

10 CFR Part 429

Confidential business information, Energy conservation, Household appliances, Imports, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on April 29, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 430 of chapter II of title 10, subchapter D of the Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Revise § 429.39 to read as follows:

§ 429.39 Battery chargers.

(a) *Determination of represented value.* Manufacturers must determine a represented value, which includes the certified rating, for each basic model of battery charger in accordance with the following sampling provisions.

(1) *Represented values include:* Battery discharge energy in watt hours (Wh), 24-hour energy consumption in watt hours (Wh), maintenance mode power in watts (W), standby mode power in watts (W), and off mode power in watts (W) for all battery chargers other than UPSs; and average load adjusted efficiency (Eff_{avg}) for UPSs.

(2) *Units to be tested.* (i) The general requirements of § 429.11 are applicable to battery chargers; and

(ii) For each basic model, a sample of sufficient size must be randomly selected and tested to ensure that—

(A) Any represented value of annual energy consumption, power, or other measure of energy use of a basic model for which consumers would favor lower values is greater than or equal to the higher of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

And, $\bar{x}$ is the sample mean; n is the number of samples; and $\bar{x}_i$ is the ith sample; or,

(*2*) The upper 97.5-percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{0.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t-statistic for a 97.5-percent one-tailed confidence interval with n-1 degrees of freedom (from appendix A of this subpart). And,

(B) Any represented value of energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values is less than or equal to the lower of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

And, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample; or,

(*2*) The lower 97.5-percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{0.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t-statistic for a 97.5-percent one-tailed confidence interval with n-1 degrees of freedom (from appendix A of this subpart).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to battery chargers.

(2) Pursuant to § 429.12(b)(13), a certification report must include the following public product-specific information for all battery chargers other than UPSs: The manufacturer and model of the test battery, the nameplate battery voltage of the test battery in volts (V), the nameplate charge capacity of the test battery in ampere-hours (Ah), the nameplate charge energy, if available, of the battery in watt hours (Wh), the manufacturer and model, when applicable, of the external power supply used for testing; the average duration of the charge and maintenance mode test in hours (hr) for the units sampled; battery discharge energy in watt hours (Wh); 24-hour energy consumption in watt hours (Wh); maintenance mode power in watts (W); standby mode power in watts (W); and off made power in watts (W). For UPSs, a certification report must include the following public product-specific information: active power in watts (W); apparent power in volt-amperes (VA); rated input and output voltages in volts (V); efficiencies at 25 percent, 50 percent, 75 percent and 100 percent of the reference test load; and average normal mode efficiency.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 3. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 4. Section 430.3 is amended, as amended at 81 FR 25600 (April 29, 2016), effective May 31, 2016, by:

■ a. Redesignating paragraphs (p)(3) through (p)(5) as paragraphs (p)(4) through (p)(6) respectively; and

■ b. Adding new paragraph (p)(3) to read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(p) * * *

(3) IEC Standard 62040–3 Ed. 2.0, (“IEC 62040–3 Ed. 2.0”), *Uninterruptible Power Systems (UPS)—Part 3: Method of Specifying the Performance and Test Requirements,* Edition 2.0, Section 6 “UPS tests,” and Annex J “UPS efficiency,” March 2011, IBR approved for appendix Y to subpart B.

* * * * *

■ 5. Section 430.23(aa) is revised to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(aa) *Battery chargers.* Measure the energy consumption or energy efficiency of a battery charger in accordance with appendix Y to this subpart.

* * * * *

■ 6. Appendix Y to subpart B of part 430 is amended by:

■ a. Revising section 1, Scope;

■ b. Amending section 2 as follows:

■ 1. Redesignating section 2.24 as section 2.28;

■ 2. Adding a new section 2.24;

■ 3. Redesignating sections 2.22 and 2.23 as sections 2.25 and 2.26, respectively;

■ 4. Adding sections 2.27, 2.27.1, 2.27.2, and 2.27.3;

■ 5. Redesignating sections 2.18 through 2.21 as sections 2.20 through 2.23, respectively;

■ 6. Adding a new section 2.19;

■ 7. Redesignating sections 2.12 through 2.17 as sections 2.13 through 2.18, respectively;

■ 8. Adding a new section 2.12;

■ c. Revising sections 3 and 4; and

■ d. Removing section 5.

The additions and revisions read as follows:

Appendix Y to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Battery Chargers

* * * * *

1. Scope

This appendix covers the testing requirements used to measure the energy consumption for battery chargers operating at either DC or United States AC line voltage (115V at 60Hz). This appendix also covers the testing requirements used to measure the energy efficiency for uninterruptible power supplies as defined in section 2 of this appendix with an AC output.

* * * * *

2. Definitions

* * * * *

2.12. *Energy storage system* is a system consisting of single or multiple devices designed to provide power to the UPS inverter circuitry.

* * * * *

2.19. *Normal mode* is a mode of operation for a UPS in which:

(1) The UPS provides required output power to the connected load without switching to battery power,

(2) The energy storage system is being maintained at full charge, and

(3) The load connected to the UPS is within the UPS's specified power rating.

* * * * *

2.24. *Reference test load* is a load or a condition with a power factor of greater than 0.99 in which the AC output socket of the UPS delivers the active power (W) for which the UPS is rated.

* * * * *

2.27. *Uninterruptible power supply* or *UPS* means a battery charger consisting of a combination of convertors, switches and energy storage devices, constituting a power system for maintaining continuity of load power in case of input power failure.

2.27.1. *Voltage and frequency dependent UPS* or *VFD UPS* means a UPS that produces an AC output where the output voltage and frequency are dependent on the input voltage and frequency. This UPS architecture does not provide corrective functions like those in voltage independent and voltage and frequency independent systems.

Note to 2.27.1: VFD input dependency may be verified by performing the AC input failure test in section 6.2.2.7 of IEC 62040–3 Ed. 2.0 (incorporated by reference, see § 430.3 of this chapter) and observing that, at a minimum, the UPS switches from normal mode of operation to battery power while the input is interrupted.

2.27.2. *Voltage and frequency independent UPS* or *VFI UPS* means a UPS where the device remains in normal mode producing an AC output voltage and frequency that is independent of input voltage and frequency variations and protects the load against adverse effects from such variations without depleting the stored energy source. The input voltage and frequency variations through which the UPS must remain in normal mode is as follows:

(1) ±10% of the rated input voltage or the tolerance range specified by the manufacturer, whichever is greater; and

(2) ±2% of the rated input frequency or the tolerance range specified by the manufacturer, whichever is greater.”

Note to 2.27.2: VFI input dependency may be verified by performing the steady state input voltage tolerance test and the input frequency tolerance test in sections 6.4.1.1 and 6.4.1.2 of IEC 62040–3 Ed. 2.0 (incorporated by reference, see § 430.3 of this chapter) respectively and observing that, at a minimum, the output voltage and frequency remain within the specified output tolerance band during the test.

2.27.3. *Voltage independent UPS* or *VI UPS* means a UPS that produces an AC output within a specific tolerance band that is independent of under-voltage or over-voltage variations in the input voltage. The output frequency of a VI UPS is dependent on the input frequency, similar to a voltage and frequency dependent system.

Note to 2.27.3: VI input dependency may be verified by performing the steady state input voltage tolerance test in section 6.4.1.1 of IEC 62040–3 Ed. 2.0 (incorporated by reference, see § 430.3 of this chapter) and observing that the output voltage remains within the specified limit during the test.

* * * * *

3. Testing Requirements for All Battery Chargers Other Than Uninterruptible Power Supplies

3.1. Standard Test Conditions

3.1.1. General. The values that may be measured or calculated during the conduct of this test procedure have been summarized for easy reference in Table 3.1.1 of this appendix.

TABLE 3.1.1—LIST OF MEASURED OR CALCULATED VALUES

Name of measured or calculated value	Reference
1. Duration of the charge and maintenance mode test.	Section 3.3.2.
2. Battery Discharge Energy.	Section 3.2.6.
3. Initial time and power (W) of the input current of connected battery.	Section 3.3.8.
4. Active and Maintenance Mode Energy Consumption.	Section 3.3.8.
5. Maintenance Mode Power.	Section 3.3.9.
6. 24 Hour Energy Consumption.	Section 3.3.10.
7. Standby Mode Power	Section 3.3.11.
8. Off Mode Power	Section 3.3.12.

3.1.2. Verifying Accuracy and Precision of Measuring Equipment

(a) Measurements of active power of 0.5 W or greater shall be made with an uncertainty of ≤2 percent at the 95 percent confidence level. Measurements of active power of less than 0.5 W shall be made with an uncertainty of ≤0.01 W at the 95 percent confidence level. The power measurement instrument shall, as applicable, have a resolution of:

(1) 0.01 W or better for measurements up to 10 W;

(2) 0.1 W or better for measurements of 10 to 100 W; or

(3) 1 W or better for measurements over 100 W.

(b) Measurements of energy (Wh) shall be made with an uncertainty of ≤2 percent at the 95 percent confidence level. Measurements of voltage and current shall be made with an uncertainty of ≤1 percent at the 95 percent confidence level. Measurements of temperature shall be made with an uncertainty of ≤2 °C at the 95 percent confidence level.

(c) All equipment used to conduct the tests must be selected and calibrated to ensure that measurements will meet the above uncertainty requirements. For suggestions on measuring low power levels, see IEC 62301, (Reference for guidance only, see § 430.4 of this chapter) especially section 5.3.2 and Annexes B and D.

3.1.3. Setting Up the Test Room. All tests, battery conditioning, and battery rest periods shall be carried out in a room with an air speed immediately surrounding the UUT of ≤0.5 m/s. The ambient temperature shall be maintained at 20 °C ±5 °C throughout the test. There shall be no intentional cooling of the UUT such as by use of separately powered fans, air conditioners, or heat sinks. The UUT shall be conditioned, rested, and tested on a thermally non-conductive surface. When not undergoing active testing, batteries shall be stored at 20 °C ±5 °C.

3.1.4. Verifying the UUT's Input Voltage and Input Frequency

(a) If the UUT is intended for operation on AC line-voltage input in the United States, it shall be tested at 115 V at 60 Hz. If the UUT is intended for operation on AC line-voltage input but cannot be operated at 115 V at 60 Hz, it shall not be tested.

(b) If a charger is powered by a low-voltage DC or AC input, and the manufacturer packages the charger with a wall adapter, sells, or recommends an optional wall adapter capable of providing that low voltage input, then the charger shall be tested using that wall adapter and the input reference source shall be 115 V at 60 Hz. If the wall adapter cannot be operated with AC input voltage at 115 V at 60 Hz, the charger shall not be tested.

(c) If the UUT is designed for operation only on DC input voltage and the provisions of section 3.1.4(b) of this appendix do not apply, it shall be tested with one of the following input voltages: 5.0 V DC for products drawing power from a computer USB port or the midpoint of the rated input voltage range for all other products. The input voltage shall be within ±1 percent of the above specified voltage.

(d) If the input voltage is AC, the input frequency shall be within ±1 percent of the specified frequency. The THD of the input voltage shall be ≤2 percent, up to and including the 13th harmonic. The crest factor of the input voltage shall be between 1.34 and 1.49.

(e) If the input voltage is DC, the AC ripple voltage (RMS) shall be:

(1) ≤0.2 V for DC voltages up to 10 V; or

(2) ≤2 percent of the DC voltage for DC voltages over 10 V.

3.2. Unit Under Test Setup Requirements

3.2.1. General Setup

(a) The battery charger system shall be prepared and set up in accordance with the manufacturer's instructions, except where those instructions conflict with the requirements of this test procedure. If no instructions are given, then factory or “default” settings shall be used, or where there are no indications of such settings, the UUT shall be tested in the condition as it would be supplied to an end user.

(b) If the battery charger has user controls to select from two or more charge rates (such as regular or fast charge) or different charge currents, the test shall be conducted at the fastest charge rate that is recommended by the manufacturer for everyday use, or, failing any explicit recommendation, the factory-default charge rate. If the charger has user controls for selecting special charge cycles that are recommended only for occasional use to preserve battery health, such as equalization charge, removing memory, or battery conditioning, these modes are not required to be tested. The settings of the controls shall be listed in the report for each test.

3.2.2. Selection and Treatment of the Battery Charger. The UUT, including the battery charger and its associated battery, shall be new products of the type and condition that would be sold to a customer. If the battery is lead-acid chemistry and the battery is to be stored for more than 24 hours between its initial acquisition and testing, the battery shall be charged before such storage.

3.2.3. Selection of Batteries To Use for Testing

(a) For chargers with integral batteries, the battery packaged with the charger shall be used for testing. For chargers with detachable batteries, the battery or batteries to be used for testing will vary depending on whether there are any batteries packaged with the battery charger.

(1) If batteries are packaged with the charger, batteries for testing shall be selected

from the batteries packaged with the battery charger, according to the procedure in section 3.2.3(b) of this appendix.

(2) If no batteries are packaged with the charger, but the instructions specify or recommend batteries for use with the charger, batteries for testing shall be selected from those recommended or specified in the instructions, according to the procedure in section 3.2.3(b) of this appendix.

(3) If no batteries are packaged with the charger and the instructions do not specify or recommend batteries for use with the charger, batteries for testing shall be selected from any that are suitable for use with the charger, according to the procedure in section 3.2.3(b) of this appendix.

(b) From the detachable batteries specified in section 3.2.3(a), the technician shall use Table 3.2.1 of this appendix to select the batteries to be used for testing depending on the type of charger being tested. Each row in the table represents a mutually exclusive charger type. The technician shall find the single applicable row for the UUT, and test according to those requirements.

(c) A charger is considered as:

(1) Single-capacity if all associated batteries have the same rated charge capacity (see section 2.22) and, if it is a batch charger, all configurations of the batteries have the same rated charge capacity.

(2) Multi-capacity if there are associated batteries or configurations of batteries that have different rated charge capacities.

(d) The selected battery or batteries will be referred to as the "test battery" and will be used through the remainder of this test procedure.

TABLE 3.2.1—BATTERY SELECTION FOR TESTING

Type of charger			Tests to perform	
Multi-voltage	Multi-port	Multi-capacity	Number of tests	Battery selection (from all configurations of all associated batteries)
No	No	No	1	Any associated battery.
No	No	Yes	2	Lowest charge capacity battery. Highest charge capacity battery.
No	Yes	Yes or No	2	Use only one port and use the minimum number of batteries with the lowest rated charge capacity that the charger can charge. Use all ports and use the maximum number of identical batteries of the highest rated charge capacity the charger can accommodate.
Yes	No	No	2	Lowest voltage battery. Highest voltage battery.
Yes	Yes to either or both		3	Of the batteries with the lowest voltage, use the one with the lowest charge capacity. Use only one port. Of the batteries with the highest voltage, use the one with the lowest charge capacity. Use only one port. Use all ports and use the battery or the configuration of batteries with the highest total rated energy capacity.

3.2.4. Limiting Other Non-Battery-Charger Functions

(a) If the battery charger or product containing the battery charger does not have any additional functions unrelated to battery charging, this subsection may be skipped.

(b) Any optional functions controlled by the user and not associated with the battery charging process (*e.g.,* the answering machine in a cordless telephone charging base) shall be switched off. If it is not possible to switch such functions off, they shall be set to their lowest power-consuming mode during the test.

(c) If the battery charger takes any physically separate connectors or cables not required for battery charging but associated with its other functionality (such as phone lines, serial or USB connections, Ethernet, cable TV lines, *etc.*), these connectors or cables shall be left disconnected during the testing.

(d) Any manual on-off switches specifically associated with the battery charging process shall be switched on for the duration of the charge, maintenance, and no-battery mode tests, and switched off for the off mode test.

3.2.5. Accessing the Battery for the Test

(a) The technician may need to disassemble the end-use product or battery charger to gain access to the battery terminals for the Battery Discharge Energy Test in section 3.3.6 of this appendix. If the battery terminals are not clearly labeled, the technician shall use a voltmeter to identify the positive and negative terminals. These terminals will be the ones that give the largest voltage difference and are able to deliver significant current (0.2 C or 1/hr) into a load.

(b) All conductors used for contacting the battery must be cleaned and burnished prior to connecting in order to decrease voltage drops and achieve consistent results.

(c) Manufacturer's instructions for disassembly shall be followed, except those instructions that:

(1) Lead to any permanent alteration of the battery charger circuitry or function;

(2) Could alter the energy consumption of the battery charger compared to that experienced by a user during typical use, *e.g.,* due to changes in the airflow through the enclosure of the UUT; or

(3) Conflict requirements of this test procedure.

(d) Care shall be taken by the technician during disassembly to follow appropriate safety precautions. If the functionality of the device or its safety features is compromised, the product shall be discarded after testing.

(e) Some products may include protective circuitry between the battery cells and the remainder of the device. If the manufacturer provides a description for accessing the connections at the output of the protective circuitry, these connections shall be used to discharge the battery and measure the discharge energy. The energy consumed by the protective circuitry during discharge shall not be measured or credited as battery energy.

(f) If the technician, despite diligent effort and use of the manufacturer's instructions, encounters any of the following conditions noted immediately below, the Battery Discharge Energy and the Charging and Maintenance Mode Energy shall be reported as "Not Applicable":

(1) Inability to access the battery terminals;

(2) Access to the battery terminals destroys charger functionality; or

(3) Inability to draw current from the test battery.

3.2.6. Determining Charge Capacity for Batteries With No Rating.

(a) If there is no rating for the battery charge capacity on the battery or in the instructions, then the technician shall determine a discharge current that meets the following requirements. The battery shall be fully charged and then discharged at this constant-current rate until it reaches the end-of-discharge voltage specified in Table 3.3.2 of this appendix. The discharge time must be not less than 4.5 hours nor more than 5 hours. In addition, the discharge test (section 3.3.6 of this appendix) (which may not be starting with a fully-charged battery) shall reach the end-of-discharge voltage within 5 hours. The same discharge current shall be used for both the preparations step (section 3.3.4 of this appendix) and the discharge test (section 3.3.6 of this appendix). The test report shall include the discharge current used and the resulting discharge times for both a fully-charged battery and for the discharge test.

(b) For this section, the battery is considered as "fully charged" when either: It has been charged by the UUT until an indicator on the UUT shows that the charge is complete; or it has been charged by a battery analyzer at a current not greater than the discharge current until the battery analyzer indicates that the battery is fully charged.

(c) When there is no capacity rating, a suitable discharge current must generally be determined by trial and error. Since the conditioning step does not require constant-current discharges, the trials themselves may also be counted as part of battery conditioning.

3.3. Test Measurement

The test sequence to measure the battery charger energy consumption is summarized in Table 3.3.1 of this appendix, and explained in detail below. Measurements shall be made under test conditions and with the equipment specified in sections 3.1 and 3.2 of this appendix.

TABLE 3.3.1—TEST SEQUENCE

Step	Description	Data taken?	Equipment needed				
			Test battery	Charger	Battery analyzer or constant-current load	AC power meter	Thermometer (for flooded lead-acid battery chargers only)
1	Record general data on UUT; Section 3.3.1.	Yes	X	X			
2	Determine test duration; Section 3.3.2.	No					
3	Battery conditioning; Section 3.3.3.	No	X	X	X		
4	Prepare battery for charge test; Section 3.3.4.	No	X	X			
5	Battery rest period; Section 3.3.5.	No	X				X
6	Conduct Charge Mode and Battery Maintenance Mode Test; Section 3.3.6.	Yes	X	X		X	
7	Battery Rest Period; Section 3.3.7.	No	X				X
8	Battery Discharge Energy Test; Section 3.3.8.	Yes	X		X		
9	Determining the Maintenance Mode Power; Section 3.3.9.	Yes	X	X		X	
10	Calculating the 24-Hour Energy Consumption; Section 3.3.10.	No					
11	Standby Mode Test; Section 3.3.11.	Yes		X		X	
12	Off Mode Test; Section 3.3.12	Yes		X		X	

3.3.1. Recording General Data on the UUT. The technician shall record:

(a) The manufacturer and model of the battery charger;

(b) The presence and status of any additional functions unrelated to battery charging;

(c) The manufacturer, model, and number of batteries in the test battery;

(d) The rated battery voltage of the test battery;

(e) The rated charge capacity of the test battery; and

(f) The rated charge energy of the test battery.

(g) The settings of the controls, if battery charger has user controls to select from two or more charge rates.

3.3.2. Determining the Duration of the Charge and Maintenance Mode Test.

(a) The charging and maintenance mode test, described in detail in section 3.3.8 of this appendix, shall be 24 hours in length or longer, as determined by the items below. Proceed in order until a test duration is determined.

(1) If the battery charger has an indicator to show that the battery is fully charged, that indicator shall be used as follows: If the indicator shows that the battery is charged after 19 hours of charging, the test shall be terminated at 24 hours. Conversely, if the full-charge indication is not yet present after 19 hours of charging, the test shall continue until 5 hours after the indication is present.

(2) If there is no indicator, but the manufacturer's instructions indicate that charging this battery or this capacity of battery should be complete within 19 hours, the test shall be for 24 hours. If the instructions indicate that charging may take longer than 19 hours, the test shall be run for the longest estimated charge time plus 5 hours.

(3) If there is no indicator and no time estimate in the instructions, but the charging current is stated on the charger or in the instructions, calculate the test duration as the longer of 24 hours or:

$$Duration = 1.4 \cdot \frac{RatedChargeCapacity\,(\mathrm{Ah})}{ChargeCurrent\,(\mathrm{A})} + 5\mathrm{h}$$

(b) If none of the above applies, the duration of the test shall be 24 hours.

3.3.3. Battery Conditioning.

(a) No conditioning is to be done on lead-acid or lithium-ion batteries. The test technician shall proceed directly to battery preparation, section 3.3.4 of this appendix, when testing chargers for these batteries.

(b) Products with integral batteries will have to be disassembled per the instructions in section 3.2.5 of this appendix, and the battery disconnected from the charger for discharging.

(c) Batteries of other chemistries that have not been previously cycled are to be conditioned by performing two charges and two discharges, followed by a charge, as below. No data need be recorded during battery conditioning.

(1) The test battery shall be fully charged for the duration specified in section 3.3.2 of this appendix or longer using the UUT.

(2) The test battery shall then be fully discharged using either:

(i) A battery analyzer at a rate not to exceed 1 C, until its average cell voltage under load reaches the end-of-discharge voltage specified in Table 3.3.2 of this appendix for the relevant battery chemistry; or

(ii) The UUT, until the UUT ceases operation due to low battery voltage.

(3) The test battery shall again be fully charged as in step (c)(1) of this section.

(4) The test battery shall again be fully discharged as per step (c)(2) of this section.

(5) The test battery shall be again fully charged as in step (c)(1) of this section.

(d) Batteries of chemistries other than lead-acid or lithium-ion that are known to have been through at least two previous full charge/discharge cycles shall only be charged once per step (c)(5), of this section.

3.3.4. Preparing the Battery for Charge Testing. Following any conditioning prior to beginning the battery charge test (section 3.3.6 of this appendix), the test battery shall be fully discharged for the duration specified in section 3.3.2 of this appendix, or longer using a battery analyzer.

3.3.5. Resting the Battery. The test battery shall be rested between preparation and the battery charge test. The rest period shall be at least one hour and not exceed 24 hours. For batteries with flooded cells, the electrolyte temperature shall be less than 30 °C before charging, even if the rest period must be extended longer than 24 hours.

3.3.6. Testing Charge Mode and Battery Maintenance Mode

(a) The Charge and Battery Maintenance Mode test measures the energy consumed during charge mode and some time spent in the maintenance mode of the UUT. Functions required for battery conditioning that happen only with some user-selected switch or other control shall not be included in this measurement. (The technician shall manually turn off any battery conditioning cycle or setting.) Regularly occurring battery conditioning or maintenance functions that are not controlled by the user will, by default, be incorporated into this measurement.

(b) During the measurement period, input power values to the UUT shall be recorded at least once every minute.

(1) If possible, the technician shall set the data logging system to record the average power during the sample interval. The total energy is computed as the sum of power samples (in watts) multiplied by the sample interval (in hours).

(2) If this setting is not possible, then the power analyzer shall be set to integrate or accumulate the input power over the measurement period and this result shall be used as the total energy.

(c) The technician shall follow these steps:

(1) Ensure that the user-controllable device functionality not associated with battery charging and any battery conditioning cycle or setting are turned off, as instructed in section 3.2.4 of this appendix;

(2) Ensure that the test battery used in this test has been conditioned, prepared, discharged, and rested as described in sections 3.3.3 through 3.3.7 of this appendix;

(3) Connect the data logging equipment to the battery charger;

(4) Record the start time of the measurement period, and begin logging the input power;

(5) Connect the test battery to the battery charger within 3 minutes of beginning logging. For integral battery products, connect the product to a cradle or wall adapter within 3 minutes of beginning logging;

(6) After the test battery is connected, record the initial time and power (W) of the input current to the UUT. These measurements shall be taken within the first 10 minutes of active charging;

(7) Record the input power for the duration of the "Charging and Maintenance Mode Test" period, as determined by section 3.3.2 of this appendix. The actual time that power is connected to the UUT shall be within ±5 minutes of the specified period; and

(8) Disconnect power to the UUT, terminate data logging, and record the final time.

3.3.7. Resting the Battery. The test battery shall be rested between charging and discharging. The rest period shall be at least 1 hour and not more than 4 hours, with an exception for flooded cells. For batteries with flooded cells, the electrolyte temperature shall be less than 30 °C before charging, even if the rest period must be extended beyond 4 hours.

3.3.8. Battery Discharge Energy Test

(a) If multiple batteries were charged simultaneously, the discharge energy is the sum of the discharge energies of all the batteries.

(1) For a multi-port charger, batteries that were charged in separate ports shall be discharged independently.

(2) For a batch charger, batteries that were charged as a group may be discharged individually, as a group, or in sub-groups connected in series and/or parallel. The position of each battery with respect to the other batteries need not be maintained.

(b) During discharge, the battery voltage and discharge current shall be sampled and recorded at least once per minute. The values recorded may be average or instantaneous values.

(c) For this test, the technician shall follow these steps:

(1) Ensure that the test battery has been charged by the UUT and rested according to the procedures above.

(2) Set the battery analyzer for a constant discharge current of 0.2 °C and the end-of-discharge voltage in Table 3.3.2 of this appendix for the relevant battery chemistry.

(3) Connect the test battery to the analyzer and begin recording the voltage, current, and wattage, if available from the battery analyzer. When the end-of-discharge voltage is reached or the UUT circuitry terminates the discharge, the test battery shall be returned to an open-circuit condition. If current continues to be drawn from the test battery after the end-of-discharge condition is first reached, this additional energy is not to be counted in the battery discharge energy.

(d) If not available from the battery analyzer, the battery discharge energy (in watt-hours) is calculated by multiplying the voltage (in volts), current (in amperes), and sample period (in hours) for each sample, and then summing over all sample periods until the end-of-discharge voltage is reached.

3.3.9. Determining the Maintenance Mode Power. After the measurement period is complete, the technician shall determine the average maintenance mode power consumption by examining the power-versus-time data from the charge and maintenance test and:

(a) If the maintenance mode power is cyclic or shows periodic pulses, compute the average power over a time period that spans a whole number of cycles and includes at least the last 4 hours.

(b) Otherwise, calculate the average power value over the last 4 hours.

3.3.10. Determining the 24-Hour Energy Consumption. The accumulated energy or the average input power, integrated over the test period from the charge and maintenance mode test, shall be used to calculate 24-hour energy consumption.

TABLE 3.3.2—REQUIRED BATTERY DISCHARGE RATES AND END-OF-DISCHARGE BATTERY VOLTAGES

Battery chemistry	Discharge rate *C*	End-of-discharge voltage volts per cell
Valve-Regulated Lead Acid (VRLA)	0.2	1.75
Flooded Lead Acid	0.2	1.70
Nickel Cadmium (NiCd)	0.2	1.0
Nickel Metal Hydride (NiMH)	0.2	1.0
Lithium Ion (Li-Ion)	0.2	2.5

TABLE 3.3.2—REQUIRED BATTERY DISCHARGE RATES AND END-OF-DISCHARGE BATTERY VOLTAGES—Continued

Battery chemistry	Discharge rate C	End-of-discharge voltage volts per cell
Lithium Polymer	0.2	2.5
Rechargeable Alkaline	0.2	0.9
Nanophosphate Lithium Ion	0.2	2.0
Silver Zinc	0.2	1.2

3.3.11. Standby Mode Energy Consumption Measurement. The standby mode measurement depends on the configuration of the battery charger, as follows.

(a) Conduct a measurement of standby power consumption while the battery charger is connected to the power source. Disconnect the battery from the charger, allow the charger to operate for at least 30 minutes, and record the power (*i.e.,* watts) consumed as the time series integral of the power consumed over a 10-minute test period, divided by the period of measurement. If the battery charger has manual on-off switches, all must be turned on for the duration of the standby mode test.

(b) Standby mode may also apply to products with integral batteries. If the product uses a cradle and/or adapter for power conversion and charging, then "disconnecting the battery from the charger" will require disconnection of the end-use product, which contains the batteries. The other enclosures of the battery charging system will remain connected to the main electricity supply, and standby mode power consumption will equal that of the cradle and/or adapter alone.

(c) If the product is powered through a detachable AC power cord and contains integrated power conversion and charging circuitry, then only the cord will remain connected to mains, and standby mode power consumption will equal that of the AC power cord (*i.e.,* zero watts).

(d) Finally, if the product contains integrated power conversion and charging circuitry but is powered through a non-detachable AC power cord or plug blades, then no part of the system will remain connected to mains, and standby mode measurement is not applicable.

3.3.12. Off Mode Energy Consumption Measurement. The off mode measurement depends on the configuration of the battery charger, as follows.

(a) If the battery charger has manual on-off switches, record a measurement of off mode energy consumption while the battery charger is connected to the power source. Remove the battery from the charger, allow the charger to operate for at least 30 minutes, and record the power (*i.e.,* watts) consumed as the time series integral of the power consumed over a 10-minute test period, divided by the period of measurement, with all manual on-off switches turned off. If the battery charger does not have manual on-off switches, record that the off mode measurement is not applicable to this product.

(b) Off mode may also apply to products with integral batteries. If the product uses a cradle and/or adapter for power conversion and charging, then "disconnecting the battery from the charger" will require disconnection of the end-use product, which contains the batteries. The other enclosures of the battery charging system will remain connected to the main electricity supply, and off mode power consumption will equal that of the cradle and/or adapter alone.

(c) If the product is powered through a detachable AC power cord and contains integrated power conversion and charging circuitry, then only the cord will remain connected to mains, and off mode power consumption will equal that of the AC power cord (*i.e.,* zero watts).

(d) Finally, if the product contains integrated power conversion and charging circuitry but is powered through a non-detachable AC power cord or plug blades, then no part of the system will remain connected to mains, and off mode measurement is not applicable.

4. Testing Requirements for Uninterruptible Power Supplies

4.1. Standard Test Conditions

4.1.1. *Measuring Equipment.*

(a) The power meter must provide true root mean square (r.m.s.) measurements of the active input and output power, with an uncertainty at full rated load of less than or equal to 0.5% at the 95% confidence level notwithstanding that voltage and current waveforms can include harmonic components. The power meter must measure input and output values simultaneously.

(b) All measurement equipment used to conduct the tests must be calibrated within the past year of the test date by a standard traceable to International System of Units such that measurements meet the above uncertainty requirements.

4.1.2. *Test Room Requirements.* All portions of the test must be carried out in a room with an air speed immediately surrounding the UUT of ≤0.5 m/s. Maintain the ambient temperature in the range of 20.0 °C to 30.0 °C, including all inaccuracies and uncertainties introduced by the temperature measurement equipment, throughout the test. No intentional cooling of the UUT, such as by use of separately powered fans, air conditioners, or heat sinks, is permitted. Test the UUT on a thermally non-conductive surface.

4.1.3. *Input Voltage and Input Frequency.* The AC input voltage and frequency to the UPS during testing must be within 3 percent of the highest rated voltage and within 1 percent of the highest rated frequency of the device.

4.2. Unit Under Test Setup Requirements

4.2.1. *General Setup.* Configure the UPS according to Appendix J.2 of IEC 62040–3 Ed. 2.0 (incorporated by reference, see § 430.3 of this chapter) with the following additional requirements:

(a) *UPS Operating Mode Conditions.* If the UPS can operate in two or more distinct normal modes as more than one UPS architecture, conduct the test in its lowest input dependency as well as in its highest input dependency mode where VFD represents the lowest possible input dependency, followed by VI and then VFI.

(b) *Energy Storage System.* The UPS must not be modified or adjusted to disable energy storage charging features. Minimize the transfer of energy to and from the energy storage system by ensuring the energy storage system is fully charged (at the start of testing) as follows:

(1) If the UUT has a battery charge indicator, charge the battery for 5 hours after the UUT has indicated that it is fully charged.

(2) If the UUT does not have a battery charge indicator but the user manual shipped with the UUT specifies a time to reach full charge, charge the battery for 5 hours longer than the time specified.

(3) If the UUT does not have a battery charge indicator or user manual instructions, charge the battery for 24 hours.

4.3. Test Measurement and Calculation.

4.3.1. *Average Power Calculations.* Perform all average power measurements and calculations in this section using one of the following methods:

(a) Record the accumulated energy (E_i) in kilowatt hours (kWh) consumed over the time period specified for each test (T_i). Calculate the average power consumption as follows:

$$P_{avg} = \frac{E_i}{T_i}$$

Where:

P_{avg} = average power
E_i = accumulated energy measured during time period of test
T_i = time period of test

(b) Record the average power consumption (P_{avg}) by sampling the power at a rate of at least 1 sample per second and computing the arithmetic mean of all samples over the time period specified for each test as follows:

$$P_{avg} = \frac{1}{n}\sum_{i=1}^{n} P_i$$

Where:

P_{avg} = average power
P_i = power measured during individual measurement (i)
n = total number of measurements

4.3.2. *Steady State.* Operate the UUT and the load for a sufficient length of time to reach steady state conditions. To determine if steady state conditions have been attained, perform the following steady state check, in which the difference between the two efficiency calculations must be less than 1 percent:

(a) Simultaneously measure the UUT's input and output power for at least 5 minutes, as specified in section 4.3.1 of this appendix, and record the average of each over the duration as P_{AVG_IN} and P_{AVG_OUT}, respectively.

(b) Calculate the UUT's efficiency, Eff_1, using the following equation:

$$Eff = \frac{P_{AVG\_OUT}}{P_{AVG\_IN}}$$

Where:

Eff is the UUT efficiency
P_{AVG_OUT} is the average output power in watts
P_{AVG_IN} is the average input power in watts

(c) Wait a minimum of 10 minutes.

(d) Repeat the steps listed in paragraphs (a) and (b) of section 4.3.1 of this appendix to calculate another efficiency value, Eff_2.

(e) Determine if the product is at steady state using the following equation:

$$Percentage\ difference = \frac{|Eff_1 - Eff_2|}{Average(Eff_1, Eff_2)}$$

If the percentage difference of Eff_1 and Eff_2 as described in the above equation, is less than 1 percent, the product is at steady state.

(f) If the percentage difference is greater than or equal to 1 percent, the product is not at steady state. Repeat the steps listed in paragraphs (c) to (e) of section 4.3.1 of this appendix until the product is at steady state.

4.3.3. *Power measurements and efficiency calculations.* Measure input and output power of the UUT for efficiency calculations according to Section J.3 of IEC 62040–3 Ed. 2.0 (incorporated by reference, see § 430.3 of this chapter), with the following exceptions:

(a) Test the UUT at the following reference test load conditions, in the following order: 100 percent, 75 percent, 50 percent, and 25 percent of the rated output power.

(b) Perform the test at each of the reference test loads by simultaneously measuring the UUT's total input and output energy in watt-hours (Wh) over a 15 minute test period with a total energy accumulation rate of at least 1 Hz. Calculate the UUT's average input power and output power for the period using the method in section 4.3.1 of this appendix, and the efficiency for that reference load using the following equation:

$$Eff_{n\%} = \frac{P_{avgOut\ n\%}}{P_{avgIn\ n\%}}$$

Where:

Eff_n = the efficiency at reference test load n%
$P_{avgOut\ n\%}$ = the average output power at reference load $n_{\%}$
$P_{avgIn\ n\%}$ = the average input power at reference load $n_{\%}$

4.3.4. *UUT Classification.* Determine the UPS architecture by performing the tests specified in the definitions of VI, VFD, and VFI (sections 2.27.1 through 2.27.3 of this appendix).

4.3.5. *Output Efficiency Calculation.*

(a) Use the load weightings from Table 4.3.1 of this appendix to determine the average normal mode loading efficiency as follows:

$$Eff_{avg} = (t_{25\%} \times Eff|_{25\%}) + (t_{50\%} \times Eff|_{50\%}) + (t_{75\%} \times Eff|_{75\%}) + (t_{100\%} \times Eff|_{100\%})$$

Where:

Eff_{avg} = the average normal mode loading efficiency
$t_{n\%}$ = the portion of time spent at reference test load $n\%$ as specified in Table 4.3.1 of this appendix
$Eff|n\%$ = the measured efficiency at reference test load n%

TABLE 4.3.1—LOAD WEIGHTINGS

Rated output power (W)	UPS architecture	Portion of time spent at reference load			
		25%	50%	75%	100%
P ≤1500 W	VFD	0.2	0.2	0.3	0.3
	VI or VFI	0	0.3	0.4	0.3
P >1500 W	VFD, VI, or VFI	0	0.3	0.4	0.3

(b) Round the calculated efficiency value to one tenth of a percentage point.

[FR Doc. 2016–11205 Filed 5–18–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[Docket No. EERE–2010–BT–TP–0044]

RIN 1904–AC37

Energy Conservation Program: Test Procedures for High-Intensity Discharge Lamps; Withdrawal

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The U.S. Department of Energy (DOE) withdraws its proposal for establishing test procedures for high-intensity discharge (HID) lamps in light of the fact that DOE published a final determination on December 9, 2015 concluding that energy conservation standards for HID lamps are not justified, thereby negating the need for an HID test procedure.

DATES: The proposed rule published on December 15, 2011 (76 FR 77914) and updated on May 22, 2014 (79 FR 29632) is withdrawn as of May 19, 2016.

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1604. Email: *high_intensity_dischage_lamps@ee.doe.gov*.

Ms. Francine Pinto, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (703) 887–7971. Email: *Francine.Pinto@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Authority

Title III of EPCA (42 U.S.C. 6291, *et seq.*), Public Law 94–163, sets forth a variety of provisions designed to improve energy efficiency. Part C of title III, which for editorial reasons was re-designated as Part A–1 upon incorporation into the U.S. Code (42 U.S.C. 6311–6317), establishes the "Energy Conservation Program for Certain Industrial Equipment," a program covering certain industrial equipment, which include the HID lamps that are the subject of this notice. Pursuant to EPCA, DOE must prescribe test procedures and energy conservation standards for HID lamps for which DOE has determined that standards would be technologically feasible, economically justified, and would result in a significant conservation of energy. (42 U.S.C. 6317(a)(1))

II. Discussion

On December 15, 2011, DOE published a Notice of Proposed rulemaking to establish test procedures for HID lamps under the Energy Policy and Conservation Act of 1975 (EPCA). 76 FR 77914. Subsequently, on May 22, 2014, DOE published a Supplemental Notice of Proposed rulemaking, updating the earlier NOPR test procedure. 79 FR 29632.

Today, DOE is withdrawing its test procedure proposal because on December 9, 2015 it published a final determination that energy conservation standards for HID lamps are not justified, consequently negating the need for an HID test procedure. 80 FR 76355.

III. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this withdrawal.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Buildings and facilities, Business and industry, Energy conservation, Grants programs—energy, Housing, Reporting and recordkeeping requirements, Technical assistance.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Reporting and recordkeeping requirements, Small business.

Issued in Washington, DC, on May 13, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2016–11912 Filed 5–18–16; 8:45 a.m.]

BILLING CODE 6450–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

[Docket ID: DoD–2016–OS–0059]

Privacy Act of 1974; Implementation

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Secretary of Defense proposes to exempt records maintained in DUSDI 01–DoD "Department of Defense (DoD) Insider Threat Management and Analysis Center (DITMAC) and DoD Component Insider Threat Records System," from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G), (H), and (I), (5), and (8); (f); and (g) of the Privacy Act. A system of records notice for this system has been published today in the **Federal Register**.

In addition, in the course of carrying out collections and analysis of information in connection with the operations of the DITMAC and DoD Component insider threat programs, exempt records received from other systems of records may become part of this system. To the extent that copies of exempt records from those other systems of records are maintained in this system, the Department also claims the same exemptions for the records from those other systems that are maintained in this system, as claimed for the original primary system of which they are a part.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment. Therefore, please submit any comments by June 20, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, ATTN: Box 24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Cindy Allard, Director of the Defense Privacy, Civil Liberties, and Transparency Division, 703–571–0070.

SUPPLEMENTARY INFORMATION: The DITMAC was established by the Under Secretary of Defense for Intelligence in order to consolidate and analyze insider threat information reported by the DoD Component insider threat programs mandated by Presidential Executive Order 13587, issued October 7, 2011, which required Federal agencies to establish an insider threat detection and prevention program to ensure the security of classified networks and the responsible sharing and safeguarding of classified information consistent with appropriate protections for privacy and civil liberties. For purposes of this system of records, the term "insider threat" is defined in the Minimum Standards for Executive Branch Insider Threat Task Force based on direction provided in Section 6.3(b) of Executive Order 13587. The DITMAC helps prevent, deter, detect, and/or mitigate the potential threat that personnel, including DoD military personnel, civilian employees, and contractor personnel, who have or had been granted eligibility for access to classified information or eligibility to hold a sensitive position may harm the security of the United States. This threat can include damage to the United States through espionage, terrorism, unauthorized disclosure of national security information, or through the loss or degradation of departmental resources or capabilities.

The system of records will be used to analyze, monitor, and audit insider threat information for insider threat detection and mitigation within DoD on threats that persons who have or had been granted eligibility for access to classified information or eligibility to hold a sensitive positions may pose to DoD and U.S. Government installations, facilities, personnel, missions, or resources. The system of records will support the DITMAC and DoD Component insider threat programs, enable the identification of systemic insider threat issues and challenges, and provide a basis for the development and recommendation of solutions to deter, detect, and/or mitigate potential insider threats. It will assist in identifying best practices among other Federal Government insider threat programs, through the use of existing DoD resources and functions and by leveraging existing authorities, policies, programs, systems, and architectures.

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"

It has been determined that this rule is not a significant rule. This rule does not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive orders.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C Chapter 6)

It has been certified that this rule does not have a significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within DoD. A Regulatory Flexibility Analysis is not required.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that this rule does not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that this rule does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that it will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that this rule does not have federalism implications. This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 310

Privacy.

Accordingly, 32 CFR part 310 is proposed to be amended as follows:

PART 310 [Amended]

■ 1. The authority citation for 32 CFR part 310 continues to read as follows:

Authority: 5 U.S.C. 552a.

§§ 310.30 through 310.53 [Redesignated as §§ 310.31 through 310.54]

■ 2. Redesignate § 310.30 through § 310.53 as § 310.31 through § 310.54.

■ 3. In Subpart F, add a new § 310.30 to read as follows:

§ 310.30 DoD-wide exemptions.

(a) Use of *DoD-wide exemptions.* DoD-wide exemptions for DOD-wide systems of records are established pursuant to 5 U.S.C. 552a(j) and (k) of the Privacy Act.

(b) *Promises of confidentiality.* (1) Only the identity of sources that have been given an express promise of confidentiality may be protected from disclosure under paragraphs (d)(3)(i), (ii), and (iii) and (d)(4) of this section. However, the identity of sources who were given implied promises of confidentiality in inquiries conducted before September 27, 1975, also may be protected from disclosure.

(2) Ensure promises of confidentiality are not automatically given but are used sparingly. Establish appropriate procedures and identify fully categories of individuals who may make such promises. Promises of confidentiality shall be made only when they are essential to obtain the information sought (see 5 CFR part 736).

(c) *Access to records for which DOD-wide exemptions are claimed.* Deny the individual access only to those portions of the records for which the claimed exemption applies.

(d) *DoD-wide exemptions.* The following exemptions are applicable to all components of the Department of Defense for the following system(s) of records:

(1) *System identifier and name:* DUSDI 01–DoD "Department of Defense (DoD) Insider Threat Management and Analysis Center (DITMAC) and DoD Component Insider Threat Records System." Exemption: This system of records is exempted from subsections (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2), (3), (4)(G)(H) and (I), (5) and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j) (2) and (k)(1), (2), (4), (5), (6), and (7).

(2) Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent that such provisions have been identified and an exemption claimed for the record and the purposes underlying the exemption for the record pertain to the record.

(3) Exemption from the particular subsections is justified for the following reasons:

(i) Subsection (c)(3). To provide the subject with an accounting of disclosures of records in this system could inform that individual of the existence, nature, or scope of an actual or potential law enforcement or counterintelligence investigation, and thereby seriously impede law enforcement or counterintelligence efforts by permitting the record subject and other persons to whom he might disclose the records to avoid criminal penalties, civil remedies, or counterintelligence measures. Access to the accounting of disclosures could also interfere with a civil or administrative action or investigation which may impede in those actions or investigations. Access also could reveal the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations.

(ii) *Subsection (c)(4).* This subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(iii) *Subsection (d)(1).* Disclosure of records in the system could reveal the identity of confidential sources and result in an unwarranted invasion of the privacy of others. Disclosure may also reveal information relating to actual or potential criminal investigations. Disclosure of classified national security information would cause damage to the national security of the United States. Disclosure could also interfere with a civil or administrative action or investigation; reveal the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations; and reveal the confidentiality and integrity of Federal testing materials and evaluation materials used for military promotions when furnished by a confidential source.

(iv) *Subsection (d)(2).* Amendment of the records could interfere with ongoing criminal or civil law enforcement proceedings and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(v) *Subsections (d)(3) and (4).* These subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(vi) *Subsection (e)(1).* It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete, but, in the interests of effective law enforcement and counterintelligence, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(vii) *Subsection (e)(2).* To collect information from the subject individual could serve notice that he or she is the subject of a criminal investigation and thereby present a serious impediment to such investigations.

(viii) *Subsection (e)(3).* To inform individuals as required by this subsection could reveal the existence of a criminal investigation and compromise investigative efforts.

(ix) Subsection (e)(4)(G), (H), and (I). These subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(x) *Subsection (e)(5).* It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete, but, in the interests of effective law enforcement, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(xi) *Subsection (e)(8).* To serve notice could give persons sufficient warning to evade investigative efforts.

(xii) *Subsection (g).* This subsection is inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

(4) In addition, in the course of carrying out analysis for insider threats, exempt records from other systems of records may in turn become part of the case records maintained in this system. To the extent that copies of exempt records from those other systems of records are maintained into this system, the DoD claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the original primary system of which they are a part.

Dated: May 13, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–11702 Filed 5–18–16; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0286]

RIN 1625–AA00

Safety Zone; Allegheny River Mile 44.1 to 45.1, Kittanning, Pennsylvania

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for all navigable waters of the Allegheny River mile 44.1 to mile 45.1. This action is needed to protect personnel, spectators, participants, and vessels from potential hazards associated with boat races. Access to this safety zone would be limited to those participating in or working with the race sponsors unless specifically authorized by the Captain of the Pittsburgh or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 20, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0287 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email MST1 Jennifer Haggins, Marine Safety Unit Pittsburgh, U.S. Coast Guard; telephone 412–221–0807, email *Jennifer.L.Haggins@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On March 24, 2016, the Three Rivers Outboard Racing Association notified the Coast Guard that it will be conducting boat races from 9:00 a.m. to 7:00 p.m. daily beginning on August 19, 2016 and through August 21, 2016. The boat races are scheduled to take place on the Allegheny River from mile 44.1 to 45.1. The purpose of this rulemaking is to ensure the safety of vessels, participants, race spectators, and those working in the boat racing event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP proposes to establish a safety zone from 9:00 a.m. to 7:00 p.m. daily beginning on August 19, 2016 and through August 21, 2016. The safety zone would cover all navigable waters of the Allegheny River from mile 44.1 to mile 45.1. The duration of the zone is intended to ensure the safety of vessels, participants, race spectators, and those working the boat racing event on navigable waters. Access to this safety zone would be limited to those participating in or working with the race sponsors. No other vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, and duration, of the safety zone and the low traffic nature of this area. The safety zone will close a small section of the Allegheny River for ten hours a day for three days; however, there is little traffic in the area. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow other waterway users to seek permission to enter the zone. Requests to transit the safety zone area would be considered on a case-by-case basis.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV. A. above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting less than two hours that would prohibit entry into the safety zone. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES.** We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0286 to read as follows:

§ 165.T08–0286 Safety Zone; Allegheny River Mile 44.1 to Mile 45.1, Kittanning, PA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Allegheny River mile 44.1 to mile 45.1.

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Pittsburgh (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in § 165.23 of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative at 412–221–0807. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 9:00 a.m. to 7:00 p.m. beginning on August 19, 2016 and through August 21, 2016.

(e) *Informational Broadcasts.* The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the dates and times of enforcement.

Dated: April 27, 2016.

L. McClain, Jr.,

Commander, U.S. Coast Guard, Captain of the Port Pittsburgh.

[FR Doc. 2016–11822 Filed 5–18–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[EPA–R09–OAR–2016–0120; FRL–9946–59–Region 9]

Clean Air Act Grant: South Coast Air Quality Management District; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed action; determination with request for comments and notice of opportunity for public hearing.

SUMMARY: The Environmental Protection Agency (EPA) has made a proposed determination that the reduction in expenditures of non-Federal funds for the South Coast Air Quality Management District (SCAQMD) in support of its continuing air program under section 105 of the Clean Air Act (CAA) for the calendar year 2015 is a result of non-selective reductions in expenditures. This determination, when final, will permit the SCAQMD to receive grant funding for FY2016 from the EPA under section 105 of the Clean Air Act.

DATES: Comments and/or requests for a public hearing must be received by the EPA at the address stated below by June 20, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. [EPA–R09–OAR–2016–0120] at *http://www.regulations.gov,* or via email to *Lance.Gary@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Gary Lance, EPA Region IX, Grants and Program Integration Office, Air Division, 75 Hawthorne Street, San Francisco, CA 94105–3901; phone: (415) 972–3992, fax: (415) 947–3579 or email address at *lance.gary@epa.gov.*

SUPPLEMENTARY INFORMATION: Section 105 of the Clean Air Act (CAA) provides grant support for the continuing air programs of eligible state, local, and tribal agencies. In accordance with 40 CFR 35.145(a), the Regional Administrator may provide air pollution control agencies up to three-fifths of the approved costs of implementing programs for the prevention and control of air pollution. Section 105 contains two cost-sharing provisions which recipients must meet to qualify for a CAA section 105 grant. An eligible entity must meet a minimum 40% match. In addition, to remain eligible for section 105 funds, an eligible entity must continue to meet the minimum match requirement as well as meet a maintenance of effort (MOE) requirement under section 105(c)(1) of the CAA, 42 U.S.C. 7405.

Program activities relevant to the match consist of both recurring and non-recurring (unique, one-time only) expenses. The MOE provision requires that a state or local agency spend at least the same dollar level of funds as it did in the previous grant year, but only for the costs of recurring activities. Specifically, section 105(c) (1), 42 U.S.C. 7405(c)(1) provides that "no agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year." Pursuant to CAA section 105(c)(2), however, the EPA may still award a grant to an agency not meeting the requirements of section 105(c)(1), "if the Administrator, after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government." These statutory requirements are repeated in the EPA's implementing regulations at 40 CFR 35.140 through 35.148. The EPA issued additional guidance to recipients on what constitutes a nonselective reduction on September 30, 2011. In consideration of legislative history, the guidance clarified that a non-selective reduction does not necessarily mean that each Executive branch agency need be reduced in equal proportion. However, it must be clear to the EPA, from the weight of evidence, that a recipient's CAA-related air program is not being disproportionately impacted or singled out for a reduction.

A section 105 recipient must submit a final financial status report no later than 90 days from the close of its grant period that documents all of its federal and non-federal expenditures for the completed period. The recipient seeking an adjustment to its MOE for that period must provide the rationale and the documentation necessary to enable the EPA to make a determination that a nonselective reduction has occurred. In order to expedite that determination, the recipient must provide details of the budget action and the comparative fiscal impacts on all the jurisdiction's executive branch agencies, the recipient agency itself, and the agency's air program. The recipient should identify any executive branch agencies or programs that should be excepted from comparison and explain why. The recipient must provide evidence that the air program is not being singled out for a reduction or being disproportionately reduced. Documentation in key areas will be needed: Budget data specific to the recipient's air program, and comparative budget data between the recipient's air program, the agency containing the air program, and the other executive branch agencies. The EPA may also request information from the recipient about how impacts on its program operations will affect its ability to meet its CAA obligations and requirements; and documentation which explains the cause of the reduction, such as legislative changes or the issuance of a new executive order.

In FY–2015, the EPA awarded the SCAQMD $5,082,526, which represented approximately 5% of the SCAQMD budget. In FY–2016, the EPA intends to award the SCAQMD approximately $5,039,863, which represents roughly 5% of the SCAQMD budget.

SCAQMD's final Federal Financial Report for FY–2014 indicated that SCAQMD's maintenance of effort (MOE) level was $106,315,128. SCAQMD's final Federal Financial Report for FY–2015 indicates that SCAQMD's maintenance of effort (MOE) level was $105,858,708. The reduced MOE is not sufficient to meet the MOE requirements under the CAA section 105 because it is not equal to or greater than the MOE for the previous fiscal year.

In order for the SCAQMD to be eligible to receive its FY–2016 CAA section 105 grant, the EPA must make a determination, (after notice and an opportunity for a public hearing), that the reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of the South Coast Air Quality Management District.

The South Coast Air Quality Management District is a single-purpose air pollution control agency whose primary source of funding is from stationary sources of emissions. It is the "unit of government for section 105 (c)(2) purposes."

The Maintenance of Effort (MOE) level for FY–2015 is higher than the last MOE adjustment in FY 2013. Specifically, the MOE for FY–2015 is $762,655 higher than the FY–2013 level, the last time a non-selective reduction was approved. As compared to the FY–2014 level, the FY–2015 MOE is $456,420 or 0.43% lower.

The FY–2015 MOE was lower than the FY–2014 level due to relatively high uncollectible accounts receivable expenditures in FY–2014. Without this higher level of uncollectible accounts receivable in FY–2014, the MOE level would have been met in FY–2015.

Also, in FY 2014–15, "Other Revenue" decreased by $10.5 million from FY 2013–14 and total revenue (Stationary Sources and Other Revenue) for this time period decreased by $9.3 million. This unpredictable revenue decrease, combined with lower levels of Stationary Source revenues since FY–2009–10, results in SCAQMD budget reductions. This may cause fluctuations in the MOE level from year to year. Stationary Source Revenues and Other Revenue for FY–2012–13 through 2014–15 is detailed below.

Year	Stationary sources	Other revenue
2013	$83,307,359	$49,624,690
2014	84,341,483	60,438,706
2015	85,546,869	49,962,777

The request for a reset of SCAQMD's MOE meets the criteria for a non-selective reduction determination based on: 1. SCAQMD's inability to levy taxes, 2. regulated and voluntary emissions reductions, 3. agency-wide expenditure cuts, and 4. use of financial reserves to balance the budget.

Although SCAQMD receives less than 5 percent of its support from the section 105 grant, the loss of that funding would seriously impact SCAQMD's ability to carry out its clean air program.

The SCAQMD's MOE reduction resulted from a loss of revenues due to circumstances beyond its control. The EPA proposes to determine that lowering SCAQMD's FY–2015 MOE level to $105,858,708 meets the CAA section 105(c)(2) criteria as resulting from a non-selective reduction of expenditures.

This notice constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All written comments received by June 20, 2016 on this proposal will be considered. The EPA will conduct a public hearing on this proposal only if a written request for such is received by the EPA at the address above by June 20, 2016. If no written request for a hearing is received, the EPA will proceed to the final determination. While notice of the final determination will not be published in the **Federal Register**, copies of the determination can be obtained by sending a written request to Gary Lance at the above address.

Dated: May 10, 2016.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2016–11843 Filed 5–18–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2016–0240; FRL–9946–45–Region 9]

Approval and Limited Approval and Limited Disapproval of Air Quality Implementation Plans; California; Northern Sonoma County Air Pollution Control District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing action on five permitting rules submitted as a revision to the Northern Sonoma County Air Pollution Control District (NSCAPCD or District) portion of the applicable state implementation plan (SIP) for the State of California pursuant to requirements under the Clean Air Act (CAA or Act). We are proposing a limited approval and limited disapproval of two rules; we are proposing to approve the remaining three permitting rules; and we are proposing to repeal three rules. The submitted revisions include amended rules governing the issuance of permits for stationary sources, including review and permitting of minor sources, and major sources and major modifications under part C of title I of the Act. The intended effect of these proposed actions is to update the applicable SIP with current NSCAPCD permitting rules and to set the stage for remedying certain deficiencies in these rules; this proposal also seeks to remedy specific deficiencies identified in our recent action on the California Infrastructure SIP. If finalized as proposed, the limited disapproval actions would trigger an obligation for EPA to promulgate a Federal Implementation Plan for the specific New Source Review (NSR) program deficiencies unless California submits and we approve SIP revisions that correct the deficiencies within two years of the final action.

DATES: Any comments must arrive by June 20, 2016.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R09–OAR–2016–0240 at *http://www.regulations.gov,* or via email to *r9airpermits@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, by phone: (415) 972–3534 or by email at *yannayon.laura@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms "we," "us," and "our" refer to EPA.

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I. The State's Submittals

A. Which rules did the State submit?

On October 16, 1985 and December 11, 2014, California submitted amended regulations to EPA for approval as revisions to the NSCAPCD portion of the California SIP under the Clean Air Act. Collectively, the submitted regulations comprise the District's current program for preconstruction review and permitting of new or modified stationary sources. These SIP revision submittals, referred to herein as the "SIP submittal" or "submitted rules," represent a significant update to the District's preconstruction review and permitting program and are intended to satisfy the requirements under part C (prevention of significant deterioration) (PSD) of title I of the Act as well as the general preconstruction review requirements for minor sources under section 110(a)(2)(C) of the Act (minor NSR).

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the District and submitted to EPA by the California Air Resources Board, which is the governor's designee for California SIP submittals.

TABLE 1—SUBMITTED NSR RULES

Rule No.	Rule title	Amended	Submitted
130	Definitions	11/14/14	12/11/14
200	Permit Requirements	11/14/14	12/11/14
220	New Source Review	11/14/14	12/11/14
230	Action on Applications	11/14/14	12/11/14
240	Permit to Operate	2/22/84	10/16/85

The submittal of Rule 240 was deemed complete by operation of law six months after the date of submittal. 40 CFR part 51, appendix V. The remaining rule submittals were determined to meet the completeness criteria 40 CFR part 51, appendix V on February 20, 2015. A completeness finding must be made before formal EPA review. Each of these submittals includes evidence of public notice and adoption of the regulation. Our technical support document (TSD) provides additional background information on each of the submitted rules.

B. What are the existing NSCAPCD rules governing stationary source permits in the California SIP?

Table 2 lists the rules that make up the existing SIP-approved rules for new or modified stationary sources in NSCAPCD. All of these rules would be replaced or deleted from the SIP if EPA takes final action on the proposed approval of the submitted set of rules listed in Table 1.

TABLE 2—EXISTING SIP RULES

Rule No.	Rule title	SIP Approval date	Federal Register citation
10	Permits Required	9/22/72	37 FR 19812.
12	Transfer	9/22/72	37 FR 19812.
18	Conditional Approval	9/22/72	37 FR 19812.
130	Definitions	5/6/11	76 FR 26192.
200	Permitting Requirements	7/31/85	50 FR 30943.
220a	New Source Review	7/31/85	50 FR 30943.
220b	New Source Review	7/31/85	50 FR 30943.
220c	New Source Review	7/31/85	50 FR 30943.
230	Action on Applications	7/31/85	50 FR 30943.
240	Permit to Operate	10/31/80	45 FR 72148.
240e	Mandatory Monitoring Requirements	12/21/78	43 FR 59489.

C. What is the purpose of this proposed rule?

The purpose of this proposed rule is to present our evaluation under the CAA and EPA's regulations of the submitted rules adopted by the District as identified in Table 1. We provide our reasoning in general terms below but provide more detailed analysis in our TSD, which is available in the docket for this proposed rulemaking.

II. EPA's Evaluation

A. How is EPA evaluating the rules?

EPA has reviewed the rules submitted by NSCAPCD governing PSD and minor NSR for stationary sources for compliance with the CAA's general requirements for SIPs in CAA section 110(a)(2), EPA's regulations for stationary source permitting programs in 40 CFR part 51, § 51.160 through § 51.164 and § 51.166, and the CAA requirements for SIP revisions in CAA section 110(l).[1] As described below, EPA is proposing a combination of actions consisting of limited approval and limited disapproval of Rules 130 (Definitions) and 220 (New Source Review); full approval of Rules 200 (Permit Requirements), 230 (Action on Applications), and 240 (Permit to Operate); and replacement of Rules 10 (Permits Required), 12 (Transfer) and 18 (Conditional Approval).

B. Do the rules meet the evaluation criteria?

With respect to procedures, CAA sections 110(a) and 110(l) require that revisions to a SIP be adopted by the State after reasonable notice and public hearing. Based on our review of the public process documentation included in the various submittals, we find that NSCAPCD has provided sufficient evidence of public notice and opportunity for comment and public hearings prior to adoption and submittal of these rules to EPA.

With respect to substantive requirements, we have evaluated each submitted rule in accordance with the CAA and regulatory requirements that apply to: (1) General preconstruction review programs for minor sources under section 110(a)(2)(C) of the Act and 40 CFR 51.160–164, and (2) PSD permit programs under part C of title I of the Act and 40 CFR 51.166. For the most part, the submitted rules satisfy the applicable requirements for these permit programs and would strengthen the applicable SIP by updating the regulations and adding requirements to address new or revised PSD permitting requirements promulgated by EPA in the last several years; however the submitted rules also contain specific deficiencies which prevent full approval of Rules 130 and 220. Below, we discuss generally our evaluation of NSCAPCD's submitted rules and the deficiencies that are the basis for our proposed action on these rules. Our TSD contains a more detailed evaluation and recommendations for program improvements.

1. Minor Source Permits

Section 110(a)(2)(C) of the Act requires that each SIP include a program to provide for "regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D" of title I of the Act. Thus, in addition to the permit programs required in parts C and D of title I of the Act, which apply to new or modified "major" stationary sources of pollutants, each SIP must include a program to provide for the regulation of the construction and modification of any stationary source within the areas covered by the plan as necessary to assure that the national ambient air quality standards (NAAQS) are achieved. These general pre-construction requirements are commonly referred to as "minor NSR" and are subject to EPA's implementing regulations in 40 CFR 51.160–51.164.

Rules 130—*Definitions,* 200—*Permit Requirements,* 220—*New Source Review,* 230—*Action on Applications,* and 240—*Permit to Operate,* contain the requirements for review and permitting of individual minor stationary sources in NSCAPCD. These rules satisfy the statutory and regulatory requirements for minor NSR programs. The changes the District made to the rules listed above as they pertain to the minor source program were largely administrative in nature and provide additional clarity to the rules.

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[1] CAA section 110(l) requires SIP revisions to be subject to reasonable notice and public hearing prior to adoption and submittal by States to EPA and prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

2. Prevention of Significant Deterioration

Part C of title I of the Act contains the provisions for the prevention of significant deterioration (PSD) of air quality in areas designated "attainment" or "unclassifiable" for the NAAQS, including preconstruction permit requirements for new major sources or major modifications proposing to construct in such areas. EPA's regulations for PSD permit programs are found in 40 CFR 51.166. NSCAPCD is currently designated as "attainment" or "unclassifiable/attainment" for all NAAQS pollutants.

The submitted rules contain the requirements for review and permitting of minor and PSD sources in NSCAPCD. The rules satisfy most of the statutory and regulatory requirements for PSD permit programs, but Rules 130 and 220 also contain some deficiencies that form the basis for our proposed limited disapproval, as discussed below.

First, 40 CFR 51.161(d) specifies that a public notice must be provided for all lead point sources, as defined in 40 CFR 51.100(k). The provisions of Rule 220 (b) cross-reference the definition of the term Significant in Rule 130 to provide specific public notice emission rate thresholds used to determine when public notice is required. Rule 130 provides thresholds for all NAAQS pollutants except lead. To correct this deficiency, the District should add an emission threshold for lead by revising the definition of the term "Significant" in Rule 130.

Second, Rule 220 does not contain any provisions specifying that required air quality modeling shall be based on the applicable models, databases, and other requirements specified in Part 51 Appendix W, as required by 40 CFR 51.160(f) and 51.166(f). Provisions pertaining to modeling requirements must also specify the requirements for using any alternative models. To correct the deficiency, the District should add the required modeling provisions to Rule 220.

Third, text in Rule 220, Subsection (b)(3) contains a significant typo concerning the requirements pertaining to stack height. This deficiency may be corrected by adding the missing word "not".

Finally, Rule 230 does not contain any provisions to satisfy the requirements of 40 CFR 51.166(r)(1) and (2) which require permit programs to include specific language providing that (1) ". . . approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the plan and any other requirements under local, State or Federal law" and (2) that if ". . . a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements . . ." of the PSD program shall apply to the source or modification as though construction had not yet commenced on the source or modification. This deficiency can be corrected by adding the language found in 40 CFR 51.166(r)(1) and (2).

Compared to the existing SIP approved PSD program in Rule 220 (approved July 31, 1985), however, submitted Rules 130 and 220 represent an overall strengthening of the District's PSD program, in large part because the rule includes updated PSD provisions to regulate new or modified major stationary sources of $PM_{2.5}$ emissions, which are unregulated under the existing SIP PSD program. Because submitted Rules 130 and 220 strengthen the SIP, we are proposing a limited approval and limited disapproval based on the deficiencies listed above.

3. Nonattainment New Source Review

The CAA defines "nonattainment areas" as air quality planning areas that exceed the primary or secondary NAAQS for the given criteria pollutant. The NSCAPCD is not designated nonattainment for any NAAQS. Because the NSCAPCD is not currently classified nonattainment for any NAAQS, we are not evaluating the submitted rules for approval under 40 CFR 51.165, which contains the requirements for nonattainment NSR programs.

4. Section 110(l) of the Act

Section 110(l) prohibits EPA from approving a revision of a plan if the revision would "interfere with any applicable requirement concerning attainment and reasonable further progress . . . or any other applicable requirement of [the Act]."

NSCAPCD is currently designated attainment or unclassifiable/attainment for all NAAQS pollutants. We are unaware of any reliance by the District on the continuation of any aspect of the permit-related rules in the NSCAPCD portion of the California SIP for the purpose of continued attainment or maintenance of the NAAQS. Our approval of the NSCAPCD SIP submittal (and supersession of the existing SIP rules) would strengthen the applicable SIP. Therefore we find that this SIP revision represents a strengthening of NSCAPCD's minor NSR and PSD programs compared to the existing SIP rules that we previously approved, and that our approval of the SIP submittal would not interfere with any applicable requirement concerning attainment or any other applicable requirement of the Act.

Given all these considerations and in light of the air quality improvements in NSCAPCD, we propose that our approval of these updated NSR regulations into the California SIP would not interfere with any applicable requirement concerning attainment or any other applicable requirement of the Act.

5. Conclusion

For the reasons stated above and explained further in our TSD, we find that the submitted rules satisfy most of the applicable CAA and regulatory requirements for the District's minor NSR and PSD permit programs under CAA section 110(a)(2)(C) and part C of title I of the Act. However, Rules 130 and 220 contain certain deficiencies that prevent us from proposing a full approval and we are proposing a limited approval and limited disapproval of these two rules. We do so based on our finding that, while these rules do not meet all of the applicable requirements, the rules represent an overall strengthening of the SIP by clarifying and enhancing the permitting requirements for major and minor stationary sources in NSCAPCD. Finally, we are proposing a full approval of Rules 200, 230, and 240, which will replace existing SIP Rules 10, 12 and 18. Our TSD, which is available in the docket for today's action, contains additional information on this rulemaking.

III. Proposed Action and Public Comment

Pursuant to section 110(k) of the CAA and for the reasons provided above, EPA is proposing a limited approval and limited disapproval of Rules 130 and 220, and approval of the remaining revisions to the NSCAPCD portion of the California SIP that governs the issuance of permits for stationary sources under the jurisdiction of NSCAPCD, including review and permitting of major sources and major modifications under part C of title I of the CAA. Specifically, EPA is proposing an action on NSCAPCD rules listed in Table 1, above, as a revision to the NSCAPCD portion of the California SIP.

EPA is proposing this action because, although we find that the new and amended rules meet most of the applicable requirements for such permit programs and that the SIP revisions improve the existing SIP, we have found certain deficiencies that prevent full approval of Rules 130 and 220, as explained further in this preamble and in the TSD for this rulemaking. The intended effect of the proposed approval and limited approval and limited disapproval portions of this action is to update the applicable SIP with current NSCAPCD permitting regulations [2] and to set the stage for remedying deficiencies in these regulations.

In addition, on April 1, 2016 (81 FR 18766), EPA partially disapproved California's Infrastructure SIP Submittal for the 1997 and 2006 $PM_{2.5}$ NAAQS with respect to Northern Sonoma County APCD because it did not include requirements for a baseline date for PSD increments for $PM_{2.5}$. If we finalize our proposed action, this Infrastructure SIP deficiency pertaining to the PSD-related requirements of section 110(a)(2)(C), (D)(i)(II) and (J) will be remedied, and we will update the approved SIP for California accordingly.

If finalized as proposed, the limited disapproval of Rules 130 and 220 would trigger an obligation for EPA to promulgate a Federal Implementation Plan unless the State of California corrects the deficiencies, and EPA approves the related plan revisions, within two years of the final action.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the NSCAPCD rules as described in Table 1 of this notice. The EPA has made, and will continue to make, this document generally electronically through *www.regulations.gov* and in hard copy at U.S. Environmental Protection Agency Region IX (Air-3), 75 Hawthorne Street, San Francisco, CA, 94105–3901.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 3, 2016.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2016–11621 Filed 5–18–16; 8:45 am]

BILLING CODE 6560–50–P

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[2] Final approval of the rules in Table 1 would supersede all of the rules in the existing California SIP as listed in Table 2.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0472; FRL–9946–20–Region 9]

Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; Arizona; Infrastructure Requirements for Nitrogen Dioxide and Sulfur Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove the Arizona State Implementation Plan (SIP) as meeting the requirements of Sections 110(a)(1) and 110(a)(2) of the Clean Air Act (CAA or the Act) for the implementation, maintenance, and enforcement of the 2010 nitrogen dioxide (NO_2) and 2010 sulfur dioxide (SO_2) national ambient air quality standards (NAAQS). CAA section 110(a)(1) requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, and that EPA act on such SIPs. We refer to such SIPs as "infrastructure" SIPs because they are intended to address basic structural SIP requirements for new or revised NAAQS including, but not limited to, legal authority, regulatory structure, resources, permit programs, monitoring, and modeling necessary to assure attainment and maintenance of the standards. In addition to our proposed partial approval and partial disapproval of Arizona's infrastructure SIP, we are proposing to reclassify one region of the state for SO_2 emergency episode planning. EPA is also proposing to approve Arizona Revised Statutes related to conducting air quality modeling and providing modeling data to EPA into the Arizona SIP. We are taking comments on this proposal and plan to follow with a final action.

DATES: Written comments must be received on or before June 20, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. [EPA–R09–OAR–2015–0472] at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Tom Kelly, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 972–3856, *kelly.thomasp@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms "we," "us," and "our" refer to EPA.

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I. EPA's Approach to the Review of Infrastructure SIP Submissions

EPA is acting upon several SIP submittals from Arizona that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2010 NO_2 and 2010 SO_2 NAAQS. The requirement for states to make a SIP submittal of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submittals "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submittals are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submittals, and the requirement to make the submittals is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submittal must address.

EPA has historically referred to these SIP submittals made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submittals. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submittal from submittals that are intended to satisfy other SIP requirements under the CAA, such as "nonattainment SIP" or "attainment SIP" submittals to address the nonattainment planning requirements of part D of title I of the CAA, "regional haze SIP" submittals required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NSR) permit program submittals to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submittals, and section 110(a)(2) provides more details concerning the required contents of these submittals. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[1] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submittals provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submittal.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submittals for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that "each" SIP submittal must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.[2] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submittals to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submittal of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[3] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submittal.

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[1] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submittal, and whether EPA must act upon such SIP submittal in a single action. Although section 110(a)(1) directs states to submit "a plan" to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submittals separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submittals to meet the infrastructure SIP requirements, EPA can elect to act on such submittals either individually or in a larger combined action.[4] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submittal for a given NAAQS without concurrent action on the entire submittal. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submittal.[5]

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submittal requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submittals for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submittal for purposes of section 110(a)(2)(B) could be very different for different pollutants, for example because the content and scope of a state's infrastructure SIP submittal to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[6]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submittals required under the CAA. Therefore, as with infrastructure SIP submittals, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submittals. For example, section 172(c)(7) requires that attainment plan SIP submittals required by part D have to meet the "applicable requirements" of section 110(a)(2). Thus, for example, attainment plan SIP submittals must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submittals required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the air quality prevention of significant deterioration (PSD) program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submittal may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submittal. In other words, EPA assumes that Congress could not have intended that each and every SIP submittal, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submittals against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submittals for particular elements.[7] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Infrastructure SIP Guidance).[8] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submittals to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submittals.[9] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submittals need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submittal for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

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[2] *See, e.g.*, Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule. 70 FR 25162, at 25163–25165, May 12, 2005 (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[3] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submittal of certain types of SIP submittals in designated nonattainment areas for various pollutants. Note, *e.g.*, that section 182(a)(1) provides specific dates for submittal of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[4] *See, e.g.*, Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting, 78 FR 4339, January 22, 2013 (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS, 78 FR 4337, January 22, 2013 (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[5] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

[6] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[7] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submittals. The CAA directly applies to states and requires the submittal of infrastructure SIP submittals, regardless of whether or not EPA provides guidance or regulations pertaining to such submittals. EPA elects to issue such guidance in order to assist states, as appropriate.

[8] Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2), Memorandum from Stephen D. Page, September 13, 2013.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submittals. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submittals to ensure that the state's SIP appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Infrastructure SIP Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.*, whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submittals because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submittals with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C, title I of the Act and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and regulated NSR pollutants, including greenhouse gases (GHGs). By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 Code of Federal Regulations (CFR) 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submittal focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia*, the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has a SIP-approved minor NSR program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submittal, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.*, already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submittal is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions ("SSM"); (ii) existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186, December 31, 2002, as amended by 72 FR 32526, June 13, 2007 ("NSR Reform"). Thus, EPA believes it may approve an infrastructure SIP submittal without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submittal even if it is aware of such existing provisions.[10] It is important to note that EPA's approval of a state's infrastructure SIP submittal should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submittals is to identify the CAA requirements that are logically applicable to that submittal. EPA believes that this approach to the review of a particular infrastructure SIP submittal is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submittal. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Infrastructure SIP Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submittal for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

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[9] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submittals to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City*, 696 F.3d7 (D.C. Circuit 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

[10] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submittal that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a "SIP call" whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[11] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submittals.[12] Significantly, EPA's determination that an action on a state's infrastructure SIP submittal is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submittal, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[13]

II. Background

A. Statutory Framework

Section 110(a)(1) of the CAA requires states to make a SIP submission within 3 years after the promulgation of a new or revised primary NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must include. Many of the section 110(a)(2) SIP elements relate to the general information and authorities that constitute the "infrastructure" of a state's air quality management program and SIP submittals that address these requirements are referred to as "infrastructure SIPs." These infrastructure SIP elements required by section 110(a)(2) are as follows:

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B): Ambient air quality monitoring/data system.
- Section 110(a)(2)(C): Program for enforcement of control measures and regulation of new and modified stationary sources.
- Section 110(a)(2)(D)(i): Interstate pollution transport.
- Section 110(a)(2)(D)(ii): Interstate and international pollution abatement.
- Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local and regional government agencies.
- Section 110(a)(2)(F): Stationary source monitoring and reporting.
- Section 110(a)(2)(G): Emergency episodes.
- Section 110(a)(2)(H): SIP revisions.
- Section 110(a)(2)(J): Consultation with government officials, public notification, PSD, and visibility protection.
- Section 110(a)(2)(K): Air quality modeling and submittal of modeling data.
- Section 110(a)(2)(L): Permitting fees.
- Section 110(a)(2)(M): Consultation/participation by affected local entities.

Two elements identified in section 110(a)(2) are not governed by the three-year submittal deadline of section 110(a)(1) and are therefore not addressed in this action. These two elements are: Section 110(a)(2)(C) to the extent it refers to permit programs required under part D (nonattainment NSR), and Section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure for the nonattainment NSR portion of section 110(a)(2)(C) or the whole of section 110(a)(2)(I).

B. Regulatory Background

In 2010 EPA promulgated revised NAAQS for NO_2 and SO_2, triggering a requirement for states to submit infrastructure SIPs. The NAAQS addressed by this infrastructure SIP proposal include the following:

- 2010 NO_2 NAAQS, which revised the primary 1971 NO_2 annual standard of 53 parts per billion (ppb) by supplementing it with a new 1-hour average NO_2 standard of 100 ppb, and retained the secondary annual standard of 53 ppb.[14]
- 2010 SO_2 NAAQS, which established a new 1-hour average SO_2 standard of 75 ppb, retained the secondary 3-hour average SO_2 standard of 500 ppb, and established a mechanism for revoking the primary 1971 annual and 24-hour SO_2 standards.[15]

C. Changes to the Application of PSD Permitting Requirements With GHGs

With respect to Elements (C) and (J), EPA interprets the Clean Air Act to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of Element D(i)(II) may also be satisfied by demonstrating the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants.

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions.[16] The Supreme Court said that EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT). In order to act consistently with its understanding of the Court's decision pending further judicial action to effectuate the decision, EPA is not continuing to apply EPA regulations that would require that SIPs include permitting requirements that the Supreme Court found impermissible. Specifically, EPA is not applying the requirement that a state's SIP-approved PSD program require that sources obtain PSD permits when GHGs are the only pollutant (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification (*e.g.*, 40 CFR 51.166(b)(48)(v)). EPA anticipates a need to revise federal PSD rules in light of the Supreme Court opinion. In addition, EPA anticipates that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court's decision. The timing and content of subsequent EPA actions with respect to EPA regulations and state PSD program approvals are expected to be informed by additional legal process before the United States Court of Appeals for the District of Columbia Circuit. At this juncture, EPA is not expecting states to have revised their PSD programs for purposes of infrastructure SIP submissions and is only evaluating such submissions to assure that the state's program correctly addresses GHGs consistent with the Supreme Court's decision.

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[11] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions," 76 FR 21639, April 18, 2011.

[12] EPA has used this authority to correct errors in past actions on SIP submittals related to PSD programs. See Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule, 75 FR 82536, December 30, 2010. EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.*, 61 FR 38664, July 25, 1996 and 62 FR 34641, June 27, 1997 (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062, November 16, 2004 (corrections to California SIP); and 74 FR 57051, November 3, 2009 (corrections to Arizona and Nevada SIPs).

[13] See, *e.g.*, EPA's disapproval of a SIP submittal from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.*, 75 FR 42342 at 42344, July 21, 2010 (proposed disapproval of director's discretion provisions); 76 FR 4540, January 26, 2011 (final disapproval of such provisions).

[14] 75 FR 6474, February 9, 2010. The annual NO 2 standard of 0.053 ppm is listed in ppb for ease of comparison with the new 1-hour standard.

[15] 75 FR 35520, June 22, 2010. The annual SO 2 standard of 0.5 ppm is listed in ppb for ease of comparison with the new 1-hour standard.

[16] *Utility Air Regulatory Group* v. *Environmental Protection Agency*, 134 S.Ct. 2427.

III. State Submittals

The Arizona Department of Environmental Quality (ADEQ) has submitted several infrastructure SIP submittals pursuant to EPA's promulgation of specific NAAQS, including:

- January 18, 2013—"Arizona State Implementation Plan Revision under the Clean Air Act Section 110(a)(1) and (2); 2010 NO_2 NAAQS." (2013 NO_2 I–SIP Submittal)
- July 23, 2013—"Arizona State Implementation Plan Revision under the Clean Air Act Section 110(a)(1) and (2); Implementation of the 2010 Sulfur Dioxide (SO_2) National Ambient Air Quality." (2013 SO_2 I–SIP Submittal)
- December 3, 2015—"Arizona State Implementation Plan Revisions for 2008 Ozone and 2010 Nitrogen Dioxide NAAQS under Clean Air Act Section 110(a)(2)(D) and Revision for All Previous and Future NAAQS under CAA Section 11(a)(2)(K)." (2015 Submittal)

We find that these submittals meet the procedural requirements for public participation under CAA section 110(a)(2) and 40 CFR 51.102. We are proposing to act on all of these submittals, except the part of the 2015 Submittal addressing the 2008 ozone standard which will be acted on separately. The submittals collectively address the infrastructure SIP requirements for the NO_2 and SO_2 NAAQS as described by this proposed rule. We refer to them collectively herein as "Arizona's Infrastructure SIP Submittals."

IV. EPA's Evaluation and Proposed Action

A. Proposed Approvals and Partial Approvals

We have evaluated Arizona's Infrastructure SIP Submittals and the existing provisions of the Arizona SIP for compliance with the infrastructure SIP requirements (or "elements") of CAA section 110(a)(2) and applicable regulations in 40 CFR part 51 ("Requirements for Preparation, Adoption, and Submittal of State Implementation Plans"). The Technical Support Document (TSD), which is available in the docket to this action, includes our evaluation for these infrastructure SIP elements, as well as our evaluation of various statutory and regulatory provisions identified and submitted by Arizona. For some elements, our analysis refers to older TSDs for prior NAAQS, which have also been included in the docket.

Based upon this analysis, we propose to approve the 2010 NO_2, and 2010 SO_2 Arizona Infrastructure SIP with respect to the following Clean Air Act requirements:

- 110(a)(2)(A): Emission limits and other control measures (all jurisdictions, both pollutants).
- 110(a)(2)(B): Ambient air quality monitoring/data system (all jurisdictions, both pollutants).
- 110(a)(2)(C) (in part): Program for enforcement of control measures and regulation of new stationary sources (ADEQ and Pinal County for both pollutants).
- 110(a)(2)(D) (in part, see below): Interstate Pollution Transport.
  - 110(a)(2)(D)(i)(I)(in part)—significant contribution to nonattainment, or prongs 1 and 2 (all jurisdictions for the NO_2 NAAQS).
  - 110(a)(2)(D)(i)(I) (in part)—interference with maintenance, or prong 3 (ADEQ and Pinal County for both pollutants).
  - 110(a)(2)(D)(ii) (in part)—interstate pollution abatement § 126 (ADEQ and Pinal County for both pollutants) and international air pollution § 115 (all jurisdictions, both pollutants).
- 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies (all jurisdictions, both pollutants).
- 110(a)(2)(F): Stationary solderurce monitoring and reporting (all jurisdictions, both pollutants).
- 110(a)(2)(G): Emergency episodes (all jurisdictions, both pollutants).
- 110(a)(2)(H): SIP revisions (all jurisdictions, both pollutants).
- 110(a)(2)(J) (in part): Consultation with government officials, § 121 (all jurisdictions, both pollutants); public notification of exceedances, § 127 (all jurisdictions, both pollutants); and prevention of significant deterioration (PSD) and visibility protection (ADEQ and Pinal County, both pollutants).
- 110(a)(2)(K): Air quality modeling and submission of modeling data (all jurisdictions, both pollutants).
- 110(a)(2)(L): Permitting fees (all jurisdictions, both pollutants).
- 110(a)(2)(M): Consultation/participation by affected local entities (all jurisdictions, both pollutants).

EPA is taking no action on Section 110(a)(2)(D)(i)(I) prongs 1 and 2 for the 2010 SO_2 NAAQS.

B. Proposed Partial Disapprovals

EPA proposes to disapprove Arizona's NO_2 and SO_2 Infrastructure SIP Submittals with respect to the following infrastructure SIP requirements:

- 110(a)(2)(C) (in part): Program for enforcement of control measures and regulation of new and modified stationary sources (Maricopa County and Pima County, both pollutants).
- 110(a)(2)(D) (in part, see below): Interstate pollution transport,
  - 110(a)(2)(D)(i)(II) (in part)—interference with maintenance, or prong 3 (Maricopa County and Pima County, both pollutants).
  - 110(a)(2)(D)(i)(II)—visibility transport or prong 4 (all jurisdictions, both pollutants).
  - 110(a)(2)(D)(ii) (in part)—interstate pollution abatement § 126 (Maricopa County and Pima County, both pollutants).
- 110(a)(2)(J) (in part): PSD and visibility protection (Maricopa County and Pima County, both pollutants)

As explained more fully in our TSD, we are proposing to disapprove the Maricopa County and Pima County portions of Arizona's Infrastructure Submittals with respect to the PSD-related requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), and the PSD requirements of 110(a)(2)(J). The Arizona SIP does not fully satisfy the statutory and regulatory requirements for PSD permit programs under part C, title I of the Act, because Maricopa County and Pima County currently implement the Federal PSD program in 40 CFR 52.21 for all regulated NSR pollutants, pursuant to delegation agreements with EPA. Accordingly, although the Arizona SIP remains deficient with respect to PSD requirements in both the Maricopa County and Pima County portions of the SIP, these deficiencies are adequately addressed in both areas by the federal PSD program and do not create new FIP obligations.

We are also proposing to disapprove all jurisdictions in Arizona for 110(a)(2)(D)(i)(II)—protecting visibility from interstate transport or prong 4. Because Arizona relies on a FIP to control sources under the Regional Haze Rule, they do not meet the requirements of this portion of 110(a)(2)(D) for NO_2 and SO_2. However, because a FIP is already in place to meet the requirements, no additional FIP obligation is triggered by our disapproval of this portion of Arizona's infrastructure SIP. EPA will continue to work with Arizona to incorporate FIP emission limits and control technologies into the state SIP.

C. Proposed Approval of Arizona Revised Statutes Into the State SIP

Included in ADEQ's 2015 Submittal was a request to approve Arizona Revised Statutes (ARS) § 49–104(A)(3) and (B)(1) into the state SIP. Arizona has requested that these statutes be included in order to meet the air quality modeling and data submission requirements of 110(a)(2)(K) for the 2010 NO_2 and 2010 SO_2 NAAQS, and past and future NAAQS, including previous Infrastructure SIP disapprovals for the 1997 ozone, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 ozone, and 2008 lead NAAQS.

110(a)(2)(K) requires states to provide for the performance of air quality modeling and the submission of air quality modeling to EPA upon request. On November 5, 2012, EPA disapproved 110(a)(2)(K) with respect to ADEQ's submittals for the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS (77 FR 66398). EPA again disapproved this I–SIP element for the 2008 Pb and 2008 O_3 NAAQS on July 14, 2015 (80 FR 40906). EPA disapproved those submissions because ADEQ, Pima, Pinal, and Maricopa Counties did not submit adequate provisions or narrative information related to the 110(a)(2)(K) requirements.

EPA has reviewed the SIP approved provisions, narrative information, and ARS §§ 49–104(A)(3) and (B)(1) contained within the 2015 Submittal. EPA is proposing to approve 110(a)(2)(K) as described in part A of this section, and detailed further in the docket for this action, based upon that review. EPA is also proposing to approve ARS §§ 49–104(A)(3) and (B)(1) into the state SIP. If approval of these statutes into the Arizona SIP is finalized, previous disapprovals for this element, found at 77 FR 66398 and 80 FR 40906, will be corrected.

D. Proposed Reclassification for Emergency Episode Planning

The priority thresholds for classification of air quality control regions are listed in 40 CFR 51.150 while the specific classifications of air quality control regions in Arizona are listed at 40 CFR 52.121. Consistent with the provisions of 40 CFR 51.153, reclassification of an air quality control region must rely on the most recent three years of air quality data. Regions classified Priority I, IA, or II are required to have SIP-approved emergency episode contingency plans, while those classified Priority III are not required to have plans.[17] We interpret 40 CFR 51.153 as establishing the means for states to review air quality data and request a higher or lower classification for any given region and as providing the regulatory basis for EPA to reclassify such regions, as appropriate, under the authorities of CAA sections 110(a)(2)(G) and 301(a)(1).

For SO_2, the Pima Intrastate region is classified as Priority II while the Central Arizona and Southeast Arizona Intrastate regions are classified as Priority IA. All other areas of the state are Priority III. After reviewing Arizona's 2013–2015 air quality data for the Pima air quality control region (AQCR), we are proposing to reclassify this region from Priority II to priority III, thus relieving the AQCR of the emergency episode plan requirement for the 2010 SO_2 NAAQS.

The classification thresholds for SO_2 are unique in that thresholds are prescribed for three different averaging periods. The thresholds and ranges for Priority II classification are as follows:

- 3-hour: Greater than 0.5 ppm,
- 24-hour: 0.10–0.17 ppm, and
- Annual arithmetic mean: 0.02–0.04 ppm.

Areas with ambient air concentrations that are below the Priority II threshold are classified as Priority III. There is one SO_2 monitor within the Pima Intrastate region, located in Tucson and operated and maintained by Pima County. The highest SO_2 levels at the Tucson monitor were 1.1 ppb (.0011 ppm) for the 24-hour average and .24 ppb (.00024 ppm) for the annual arithmetic mean. Both occurred in 2013. In addition, the highest 1-hour SO_2 concentration at the Tucson monitor during this period was 9.6 ppb (.0096 ppm), which occurred in 2014. Monitored levels in 2015 were even lower than the previous two years. The highest 1 hour level was 5.1 ppb (.0051 ppm) and the annual arithmetic mean was .16 ppb (.00016 ppm) While there are no 1-hour SO_2 classification thresholds in 40 CFR 51.150(b), by definition these concentrations reinforce the fact that 3-hour and 24-hour levels have not exceeded the respective Priority II classification thresholds because they are lower than such thresholds.

Thus, we propose to reclassify the Pima Intrastate AQCR to Priority III for SO_2. Should we finalize this reclassification, the Pima Intrastate region would no longer be required to have an emergency episode contingency plan in place for SO_2.

E. Request for Public Comments

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. We will accept comments from the public on this proposal for the next 30 days. We will consider these comments before taking final action.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law.

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[17] 40 CFR 51.151 and 51.152.

Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Approval and promulgation of implementation plans, Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements, and Sulfur dioxide.

Dated: April 29, 2016.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2016–10985 Filed 5–18–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2013–0696; FRL–9944–28–OAR]

RIN 2060–AS86

Technical Amendments to Performance Specification 18 and Procedure 6

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to make several minor technical amendments to the performance specifications and test procedures for hydrogen chloride (HCl) continuous emission monitoring systems (CEMS). The EPA is also proposing to make several minor amendments to the quality assurance (QA) procedures for HCl CEMS used for compliance determination at stationary sources. The performance specification (Performance Specification 18) and the QA procedures (Procedure 6) were published in the **Federal Register** on July 7, 2015. These proposed amendments make several minor corrections and clarify several aspects of these regulations. In the "Rules and Regulations" section of this **Federal Register**, the EPA is amending Performance Specification 18 and Procedure 6 as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: *Comments:* Written comments must be received by July 5, 2016.

Public Hearing. The EPA will hold a public hearing on this rule if requested. Requests for a hearing must be made by May 24, 2016. Requests for a hearing should be made to Ms. Candace Sorrell via email at *sorrell.candace@epa.gov* or by phone at (919) 541–1064. If a hearing is requested, it will be held on June 3, 2016 at the EPA facility in Research Triangle Park, NC.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2013–0696, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

All documents in the docket are listed on the *https://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Ave. NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Candace Sorrell, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Measurement Technology Group (Mail Code: E143–02), Research Triangle Park, NC 27711; telephone number: (919) 541–1064; fax number: (919) 541–0516; email address: *sorrell.candace@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Why is the EPA issuing this proposed rule?

The EPA is proposing to take action to make minor technical amendments to Performance Specification 18 (PS 18) and Procedure 6. In addition, we have published a direct final rule making these amendments in the "Rules and Regulations" section of this **Federal Register** because we view this as non-controversial action and anticipate no adverse comment. We have explained the amendments and our reasons for this action in the preamble of the direct final rule. The regulatory text for this proposal is identical to that for the direct final rule published in the "Rules and Regulations" section of this **Federal Register**.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule, and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

II. Does this action apply to me?

The major entities that would potentially be affected by the final PS 18 and the QA requirements of Procedure 6 for gaseous HCl CEMS are those entities that are required to install a new HCl CEMS, relocate an existing HCl CEMS, or replace an existing HCl CEMS under any applicable subpart of 40 CFR part 60, 61, or 63. Table 1 of this preamble lists the current federal rules by subpart and the corresponding source categories to which PS 18 and Procedure 6 potentially would apply.

TABLE 1—SOURCE CATEGORIES THAT WOULD POTENTIALLY BE SUBJECT TO PS 18 AND PROCEDURE 6

Subpart(s)	Source category
40 CFR Part 63	
Subpart LLL	Portland Cement Manufacturing Industry.
Subpart UUUUU	Coal- and Oil-fired Electric Utility Steam Generating Units.
Subpart DDDDD	Industrial, Commercial, and Institutional Boilers and Process Heaters.

The requirements of PS 18 and Procedure 6 may also apply to stationary sources located in a state, district, reservation, or territory that adopts PS 18 or Procedure 6 in its implementation plan.

Table 2 lists the corresponding North American Industry Classification System (NAICS) codes for the source categories listed in Table 1 of this preamble.

TABLE 2—NAICS FOR POTENTIALLY REGULATED ENTITIES

Industry	NAICS Codes
Fossil Fuel-Fired Electric Utility Steam Generating Units	327310 [a] 921150
Portland Cement Manufacturing Plants	327310
Industrial, Commercial, and Institutional Boilers and Process Heaters	211 321 322 325 324 316, 326, 339 331 332 336 221 622 611

[a] Industry in Indian Country.

Tables 1 and 2 are not intended to be exhaustive, but rather they provide a guide for readers regarding entities potentially affected by this action. If you have any questions regarding the potential applicability of PS 18 and test procedures (Procedure 6) to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. These quality assurance procedures do not add information collection requirements beyond those currently required under the applicable regulations.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action makes minor technical correction and adds clarification in PS 18 and Procedure 6 and does not impose additional regulatory requirements on sources.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. Rules establishing quality assurance requirements impose no costs independent from national emission standards which require their use, and such costs are fully reflected in the regulatory impact assessment for those emission standards.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. This action adds additional language that clarifies several aspects for the performance standard and procedure and corrects some minor technical errors, but does not change the requirements for conducting the test method. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action does not relax the control measures on sources regulated by the rule and, therefore, will not cause emissions increases from these sources.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Continuous emission monitoring systems, Hydrogen chloride, Performance specifications, Test methods and procedures.

Dated: May 2, 2016.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend title 40, chapter I, of the Code of Federal Regulations as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. In appendix B to part 60, Performance Specification 18:

■ a. Revise Sections 3.1 through 3.23, 11.5.6.5, 11.8.6.2, 12.1, 12.2 and 12.4.4;

■ b. Add Sections 3.24, 3.25, and 12.2.1; and

■ c. Revise Section 11.2.3 in appendix A of Performance Specification 18.

The revisions and additions read as follows:

Appendix B to Part 60—Performance Specifications

* * * * *

Performance Specification 18–Performance Specifications and Test Procedures for Gaseous Hydrogen Chloride (HCl) Continuous Emission Monitoring Systems at Stationary Sources

* * * * *

3.0 Definitions

3.1 *Beam attenuation* is the reduction in electromagnetic radiation (light) throughput from the maximum beam intensity experienced during site specific CEMS operation.

3.2 *Beam intensity* is the electromagnetic radiation (light) throughput for an IP–CEMS instrument measured following manufacturers specifications.

3.3 *Calibration cell* means a gas containment cell used with cross stack or integrated path (IP) CEMS for calibration and to perform many of the test procedures required by this performance specification. The cell may be a removable sealed cell or an evacuated and/or purged cell capable of exchanging reference and other calibration gases as well as zero gas standards. When charged, it contains a known concentration of HCl and/or interference gases. The calibration cell is filled with zero gas or removed from the optical path during stack gas measurement.

3.4 *Calibration drift* (CD) means the absolute value of the difference between the CEMS output response and an upscale reference gas or a zero-level gas, expressed as a percentage of the span value, when the CEMS is challenged after a stated period of operation during which no unscheduled adjustments, maintenance or repairs took place.

3.5 *Centroidal area* means a central area that is geometrically similar to the stack or duct cross section and is no greater than 10 percent of the stack or duct cross-sectional area.

3.6 *Continuous Emission Monitoring System* (CEMS) means the total equipment required to measure the pollutant concentration or emission rate continuously. The system generally consists of the following three major subsystems:

3.6.1 *Sample interface* means that portion of the CEMS used for one or more of the following: Sample acquisition, sample transport, sample conditioning, defining the optical measurement path, and protection of the monitor from the effects of the stack effluent.

3.6.2 *HCl analyzer* means that portion of the HCl CEMS that measures the total vapor phase HCl concentration and generates a proportional output.

3.6.3 *Data recorder* means that portion of the CEMS that provides a permanent electronic record of the analyzer output. The data recorder may record other pertinent data such as effluent flow rates, various instrument temperatures or abnormal CEMS operation. The data recorder may also include automatic data reduction capabilities and CEMS control capabilities.

3.7 *Diluent gas* means a major gaseous constituent in a gaseous pollutant mixture. For combustion sources, either carbon dioxide (CO_2) or oxygen (O_2) or a combination of these two gases are the major gaseous diluents of interest.

3.8 *Dynamic spiking* (DS) means the procedure where a known concentration of HCl gas is injected into the probe sample gas stream for extractive CEMS at a known flow rate to assess the performance of the measurement system in the presence of potential interference from the flue gas sample matrix.

3.9 *Independent measurement(s)* means the series of CEMS data values taken during sample gas analysis separated by two times the procedure specific response time (RT) of the CEMS.

3.10 *Integrated path CEMS* (IP–CEMS) means an in-situ CEMS that measures the gas concentration along an optical path in the stack or duct cross section.

3.11 *Interference* means a compound or material in the sample matrix other than HCl whose characteristics may bias the CEMS measurement (positively or negatively). The interference may not prevent the sample measurement, but could increase the analytical uncertainty in the measured HCl concentration through reaction with HCl or by changing the electronic signal generated during HCl measurement.

3.12 *Interference test* means the test to detect CEMS responses to interferences that are not adequately accounted for in the calibration procedure and may cause measurement bias.

3.13 *Level of detection* (LOD) means the lowest level of pollutant that the CEMS can detect in the presence of the source gas matrix interferents with 99 percent confidence.

3.14 *Liquid evaporative standard* means a reference gas produced by vaporizing National Institute of Standards and Technology (NIST) traceable liquid standards of known HCl concentration and quantitatively diluting the resultant vapor with a carrier gas.

3.15 *Measurement error* (ME) is the mean difference between the concentration measured by the CEMS and the known concentration of a reference gas standard, divided by the span, when the entire CEMS, including the sampling interface, is challenged.

3.16 *Optical path* means the route light travels from the light source to the receiver used to make sample measurements.

3.17 *Path length* means, for an extractive optical CEMS, the distance in meters of the optical path within a gas measurement cell. For an IP–CEMS, path length means the distance in meters of the optical path that passes through the source gas in the stack or duct.

3.18 *Point CEMS* means a CEMS that measures the source gas concentration, either at a single point at the sampling probe tip or over a path length for IP–CEMS less than 10 percent of the equivalent diameter of the stack or duct cross section.

3.19 *Stack pressure measurement device* means a NIST-traceable gauge or monitor that measures absolute pressure and conforms to the design requirements of ASME B40.100–2010, "Pressure Gauges and Gauge Attachments" (incorporated by reference—see § 60.17).

3.20 *Reference gas standard* means a NIST-traceable gas standard containing a known concentration of HCl certified in accordance with an EPA traceability protocol in section 7.1 of this PS.

3.21 *Relative accuracy* (RA) means the absolute mean difference between the gas concentration or the emission rate determined by the CEMS and the value determined by the RM, plus the confidence coefficient of a series of nine test runs, divided by the average of the RM or the applicable emission standard.

3.22 *Response time* (RT) means the time it takes for the measurement system, while operating normally at its target sample flow rate, dilution ratio, or data collection rate to respond to a known step change in gas concentration, either from a low- or zero-level to a high-level gas concentration or from a high-level to a low or zero-level gas concentration, and to read 95 percent of the change to the stable instrument response. There may be several RTs for an instrument related to different functions or procedures (*e.g.*, DS, LOD, and ME).

3.23 *Span value* means an HCl concentration approximately equal to two times the concentration equivalent to the emission standard unless otherwise specified in the applicable regulation, permit or other requirement. Unless otherwise specified, the span may be rounded up to the nearest multiple of 5.

3.24 *Standard addition* means the addition of known amounts of HCl gas (either statically or dynamically) to the actual measurement path or measured sample gas stream.

3.25 *Zero gas* means a gas or liquid with an HCl concentration that is below the LOD of the measurement system.

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11.0 Performance Specification Test Procedure

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11.5.6.5 If your system LOD field verification does not demonstrate a SAR greater than or equal to your initial controlled environment LOD, you must increase the SA concentration incrementally and repeat the field verification procedure until the SAR is equal to or greater than LOD. The site-specific standard addition detection level (SADL) is equal to the standard addition needed to achieve the acceptable SAR, and SADL replaces the controlled environment LOD. For extractive CEMS, the SADL is calculated as the ESA using Equation A7 in appendix A of this PS. For IP–CEMS, the SADL is the SA calculated using Equation A8 in appendix A of this PS. As described in section 13.1 of this PS, the LOD or the SADL that replaces an LOD must be less than 20 percent of the applicable emission limit.

* * * * *

11.8.6.2 For IP–CEMS, you must include the source measurement optical path while performing the upscale CD measurement; you may exclude the source measurement optical path when determining the zero gas concentration. Calculate the CD for IP CEMS using equations 4, 5, 6B, and 7 in section 12.4.

* * * * *

12.0 Calculations and Data Analysis

12.1 Nomenclature

C_i = Zero or HCl reference gas concentration used for test i (ppmv);
$C_{i,eff}$ = Equivalent concentration of the reference gas value, C_i, at the specified conditions (ppmv);
CC = Confidence coefficient (ppmv);
$CD_{extractive}$ = Calibration drift for extractive CEMS (percent);
CD_{IP} = Calibration drift for IP–CEMS (percent);
CD_0 = Calibration drift at zero HCl concentrations for an IP–CEMS (percent);
d_{avg} = Mean difference between CEMS response and the reference gas (ppmv);
d_i = Difference of CEMS response and the RM value (ppmv);
I = Total interference from major matrix stack gases, (percent);
LSF = Line strength factor for IP–CEMS instrument specific correction for temperature and gas matrix effects derived from the HITRAN and/or manufacturer specific database (unitless);
ΔMC_{avg} = Average of the 3 absolute values of the difference between the measured HCl calibration gas concentrations with and without interference from selected stack gases (ppmv);
MC_i = Measured HCl reference gas concentration i (ppmv);
$\overline{MC_i}$ = Average of the measured HCl reference gas concentration i (ppmv);
MC_{int} = Measured HCl concentration of the HCl reference gas plus the individual or combined interference gases (ppmv);
$ME_{extractive}$ = Measurement error for extractive CEMS (percent);
ME_{IP} = Measurement error for IP–CEMS (percent);
MN_{avg} = Average concentration at all sampling points (ppmv);
MN_{bi} = Measured native concentration bracketing each calibration check measurement (ppmv);
MN_i = Measured native concentration for test or run I (ppmv);
n = Number of measurements in an average value;
P_{stack} = Absolute stack pressure (mm Hg)
$P_{reference}$ = Absolute pressure of the calibration cell for IP–CEMS (mm Hg)
PL_{Cell} = Path length of IP–CEMS calibration cell (m);
PL_{Stack} = Path length of IP–CEMS stack optical path (m);
RA = Relative accuracy of CEMS compared to a RM (percent);
RM_i = RM concentration for test run i (ppmv);
RM_{avg} = Mean measured RM value (ppmv);
S = Span value (ppmv);
S_d = Standard deviation of the differences (ppmv);
S_{ti} = Stratification at traverse point i (percent);
SADL = Standard addition detection level (ppmv);
$t_{0.975}$ = One-sided t-value at the 97.5th percentile obtained from Table 5 in section 17.0 for n − 1 measurements;
$T_{reference}$ = Temperature of the calibration cell for IP–CEMS (degrees Kelvin);
T_{stack} = Temperature of the stack at the monitoring location for IP–CEM (degrees Kelvin).

12.2 Calculate the Difference Between the Measured HCl Concentration With and Without Interferents for Each Interference Gas (or Mixture) for Your CEMS as:

$$\Delta MC_{avg} = \frac{\sum_{i=1}^{3} |MC_i - MC_{int}|}{3} \qquad \text{Eq. 1}$$

Calculate the total percent interference as:

$$I = \sum_{i=1}^{n} \frac{\Delta MC_{avg}}{\overline{MC_i}} * 100 \qquad \text{Eq. 2}$$

12.2.1 Calculate the equivalent concentration $C_{i,eff}$ using Equation 4:

$$C_{i,eff} = \left[C_i \times \frac{PL_{cell}}{PL_{Stack}} \times \frac{T_{stack}}{T_{reference}} \times \frac{P_{reference}}{P_{stack}} LSF\right] \quad \text{Eq. 4}$$

* * * * *

12.4.4 Calculate the zero CD as a percent of span for an IP–CEMS as:

$$CD_0 = \frac{(|(MC_i - MN_b) - (MC_{i+1} - MN_b)|)}{S} * 100 \qquad \text{Eq. 7}$$

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PS–18 Appendix A Standard Addition Procedures

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11.0 Calculations and Data Analysis. * * *

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11.2.3 If you determine your spike dilution factor using an independent stable tracer that is present in the native source emissions, calculate the dilution factor for dynamic spiking using equation A3:

$$DF = \frac{M_{spiked\ tracer} - M_{native\ tracer}}{C_{tracer\ spiked} - M_{native\ tracer}} \qquad \text{Eq. A3}$$

* * * * *

■ 3. In appendix F to part 60, revise Sections 4.1.5, 4.1.5.1, 4.1.5.3, and 5.2.4.2 in Procedure 6 to read as follows:

Appendix F to Part 60—Quality Assurance Procedures

* * * * *

Procedure 6. Quality Assurance Requirements for Gaseous Hyrogen Chloride (HCl) Continuous Emission Monitoring Systems Used for Compliance Determination at Stationary Sources

* * * * *

4.0 Daily Data Quality Assurance Requirements and Measurement Standardization Procedures

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4.1.5 Additional Quality Assurance for Data above Span. Unless otherwise specified in an applicable rule or permit, this procedure must be used to assure data quality and may be used when significant data above span is being collected.

4.1.5.1 Any time the average measured concentration of HCl exceeds 150 percent of the span value for two consecutive 1-hour averages, conduct the following 'above span' CEMS response check.

* * * * *

4.1.5.3 Unless otherwise specified in an applicable rule or permit, if the 'above span' response check is conducted during the period when measured emissions are above span and there is a failure to collect at least one data point in an hour due to the response check duration, then determine the emissions average for that missed hour as the average of hourly averages for the hour preceding the missed hour and the hour following the missed hour

* * * * *

5.0 Data Accuracy Assessment

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5.2.4.2 Calculate results as described in section 6.4. To determine CEMS accuaracy you must calculate the dynamic spiking error (DSE) for each of the two upscale audit gases using equation A5 in appendix A to PS–18 and Equation 6–3 in section 6.4 of Procedure 6 appendix B to this part.

* * * * *

[FR Doc. 2016–10990 Filed 5–18–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2015–0032; FRL–9946–02]

Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or On Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petitions and request for comment.

SUMMARY: This document announces EPA's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before June 20, 2016.

ADDRESSES: Submit your comments, identified by the Docket Identification (ID) Number and the Pesticide Petition Number (PP) of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, EPA seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is EPA taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petitions so that the public has an opportunity to comment on these requests for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petitions may be obtained through the petition summaries referenced in this unit.

New Tolerances

1. *PP 5E8376.* (EPA–HQ–OPP–2015–0679). Bayer CropScience LP, P.O. Box 12014, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709, requests to establish a tolerance in 40 CFR 180.641 for residues of the insecticide spirotetramat in or on asparagus at 0.10 parts per million (ppm). Liquid chromatography/triple stage quadruple mass spectrometry (LC/MS/MS) is used to measure and evaluate residues of the chemical spirotetramat.

2. *PP 5E8422.* (EPA–HQ–OPP–2015–0829). Interregional Research Project Number 4 (IR–4), Rutgers University, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, requests to establish tolerances in 40 CFR 180.599 for residues of the insecticide acequinocyl in or on avocado at 0.4 ppm; bean, dry, seed at 0.03 ppm; vegetable, cucurbit, group 9 at 0.2 ppm; tea, plucked leaves at 40 ppm; cherry subgroup 12–12A at 1.0 ppm; fruit, citrus, group 10–10 at 0.20 ppm; fruit, pome, group 11–10 at 0.40 ppm; nut, tree, group 14–12 at 0.02 ppm; and vegetable, fruiting, group 8–10 at 0.70 ppm. The analytical method to quantitate residues of acequinocyl and acequinocyl-OH in/on fruit crops utilizes high pressure liquid chromatography (HPLC) using mass spectrometric (MS/MS) detection. The target limit of quantitation (LOQ) is 0.01 ppm.

3. *PP 5E8428.* (EPA–HQ–OPP–2016–0013). IR–4, Rutgers University, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, requests to establish tolerances in 40 CFR 180.613 for residues of the insecticide flonicamid, *N*-(cyanomethyl)-4-(trifluoromethyl)-3-pyridinecarboxamide, and its metabolites, TFNA (4-trifluoromethylnicotinic acid), TFNA–AM (4-trifluoromethylnicotinamide), and TFNG, *N*-(4-trifluoromethylnicotinoyl)glycine, calculated as the stoichiometric equivalent of flonicamid, in or on pea and bean, dried shelled, except soybean, subgroup 6C at 3.0 ppm; pea and bean, succulent shelled, subgroup 6B at 6.0 ppm; and vegetable, legume, edible podded, subgroup 6A at 4.0 ppm. The analytical methodology used to measure and evaluate residues of flonicamid in various crops includes an initial extraction, typically with acetonitrile/deionized water, followed by a liquid-liquid partition with ethyl acetate. The final sample solution is quantitated using a liquid chromatograph equipped with a reverse phase column and a triple quadruple mass spectrometer.

4. *PP 5E8434.* (EPA–HQ–OPP–2016–0064). IR–4, Rutgers University, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, requests to establish tolerances in 40 CFR 180.579 for residues of fenamidone (4H-imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3-(phenylamino)-, (S)-) in or on the raw agricultural commodities basil, fresh leaves at 30 ppm; and basil, dried leaves at 200 ppm. Additionally, tolerances are proposed for the crops in the proposed crop subgroup 4–15A, leafy greens subgroup at 60.0 ppm, including amaranth, Chinese; amaranth, leafy; aster, Indian; blackjack; cat's whiskers; chervil, fresh leaves; cham-chwi; cham-na-mul; chipilin; chrysanthemum, garland; cilantro, fresh leaves; corn salad; cosmos; dandelion; dang-gwi; dillweed; dock; dol-nam-mul; ebolo; endive; escarole; fameflower; feather cockscomb; good king henry; huauzontle; jute, leaves; lettuce, bitter; lettuce, head; lettuce, leaf; orach; parsley, fresh leaves; plantain, buckhorn; primrose, English; purslane, garden; purslane, winter; radicchio;

spinach; spinach, malabar; spinach, New Zealand; spinach, tanier; swiss chard; and violet, Chinese; the crops in the proposed crop subgroup 4–15B, *Brassica* leafy greens subgroup at 55 ppm, including arugula; broccoli raab; broccoli, Chinese; cabbage, Abyssinian; cabbage, seakale; Chinese cabbage, bok choy; collards; cress, garden; cress, upland; hanover salad; kale; maca; mizuna; mustard greens; radish, leaves; rape greens; rocket, wild; shepherd's purse; turnip greens; and watercress; the crops in the proposed crop subgroup 22B, leaf petiole vegetable subgroup at 60 ppm, including cardoon; celery; celery, Chinese; fuki; rhubarb; udo; and zuiki; the crops in the proposed crop group 5–15 (*Brassica* head and stem vegetable) at 5.0 ppm, including broccoli; brussels sprouts; cabbage; cabbage, Chinese, napa; and cauliflower; cottonseed subgroup 20C at 0.02 ppm; kohlrabi at 5.0 ppm; celtuce at 60 ppm; and fennel, Florence, fresh leaves and stalk at 60 ppm. Residues are quantified by HPLC with tandem mass spectrometric detection (LC/MS/MS). The method LOQ is 0.02 ppm or lower for fenamidone in all raw agricultural commodities and processed fractions.

5. *PP 5E8437.* (EPA–HQ–OPP–2016–0049). IR–4, Rutgers University, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, requests to establish tolerances in 40 CFR 180.685 for residues of the fungicide oxathiapiprolin, 1-[4-[4-[5-(2,6-difluorophenyl)-4,5-dihydro-3-isoxazolyl]-2-thiazolyl]-1-piperidinyl]-2-[5-methyl-3-(trifluoromethyl)-1H-pyrazol-1-yl]-ethanone, including its metabolites and degradates, in or on basil, fresh leaves at 10.0 ppm; basil, dried leaves at 80 ppm; caneberry subgroup 13–07A at 0.5 ppm; and, as designated in the November 14, 2014, proposed rule "Tolerance Crop Grouping Program IV" (79 FR 68153):

(i) All individual crops in the proposed leafy greens subgroup 4–14A at 15 ppm, including amaranth, Chinese; amaranth, leafy; aster, Indian; blackjack; cat's whiskers; chervil, fresh leaves; cham-chwi; cham-na-mul; chipilin; chrysanthemum, garland; cilantro, fresh leaves; corn salad; cosmos; dandelion; dang-gwi; dillweed; dock; dol-nam-mul; ebolo; endive; escarole; fameflower; feather cockscomb; good king henry; huauzontle; jute, leaves; lettuce, bitter; lettuce, head; lettuce, leaf; orach; parsley, fresh leaves; plantain, buckhorn; primrose, English; purslane, garden; purslane, winter; radicchio; spinach; spinach, malabar; spinach, New Zealand; spinach, tanier; swiss chard; and violet, Chinese;

(ii) All individual crops in the proposed *Brassica* leafy greens subgroup 4–14B at 10 ppm, including arugula; broccoli raab; broccoli, Chinese; cabbage, Abyssinian; cabbage, seakale; Chinese cabbage, bok choy; collards; cress, garden; cress, upland; hanover salad; kale; maca; mizuna; mustard greens; radish, leaves; rape greens; rocket, wild; shepherd's purse; turnip greens; and watercress;

(iii) All individual crops in the proposed *Brassica* head and stem vegetable group 5–14 at 1.5 ppm, including broccoli; brussels sprouts; cabbage; cabbage, Chinese, napa; and cauliflower; and

(iv) All individual crops in the proposed stalk and stem vegetable subgroup 22A at 2 ppm, including agave; aloe vera; asparagus; bamboo, shoots; celtuce; fennel, Florence, fresh leaves and stalk; fern, edible; kale, sea; kohlrabi; palm hearts; prickly pear, pads; and prickly pear, Texas, pads.

The analytical methodology, high pressure liquid chromatography with tandem mass spectrometry (MS/MS) detection, is used to measure and evaluate oxathiapiprolin residues.

6. *PP 5F8429.* (EPA–HQ–OPP–2016–0029). Gowan Co., P.O. Box 5569, Yuma, AZ 85366–5569, requests to establish a tolerance in 40 CFR 180.632 for residues of the miticide/insecticide fenazaquin (4-[2-[4-(1,1,-dimethylethyl) phenyl] ethoxy] quinazoline) in or on the raw commodities for tree nut crop group 14–12 at 0.02 ppm. The LC/MS/MS with positive-ion electrospray ionization tandem mass spectrometry is used to measure and evaluate the chemical fenazaquin.

7. *PP 5F8441.* (EPA–HQ–OPP–2016–0049). Syngenta Crop Protection LLC, 410 Swing Rd., P.O. Box 18300, Greensboro, NC 27419–8300, requests to establish tolerances in 40 CFR 180.685 for residues of the fungicide oxathiapiprolin in or on citrus fruit crop group 10–10 at 0.06 ppm; citrus oil at 2.0 ppm; citrus pulp at 0.09 ppm; and potato, wet peel at 0.07 ppm. The analytical method using high pressure liquid chromatography with MS/MS detection is used to measure and evaluate the chemical residues of oxathiapiprolin.

8. *PP 6E8446.* (EPA–HQ–OPP–2016–0128). IR–4, Rutgers University, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, requests to establish a tolerance in 40 CFR 180.620 for residues of the insecticide etofenprox (2-(4-ethoxyphenyl)-2-methylpropyl 3-phenoxybenzyl ether) in or on fungi, edible, group 21 at 3.0 ppm. The analytical method consisting of liquid chromatography with tandem mass spectrometry (LC/MS/MS) is used to measure and evaluate the chemical etofenprox.

9. *PP 6E8449.* (EPA–HQ–OPP–2016–0160). ISK Biosciences Corp., 7470 Auburn Rd., Suite A, Concord, OH 44077, requests to establish a tolerance in 40 CFR 180.574 for residues of fluazinam, including its metabolites and degradates, in or on the raw agricultural commodity dried tea at 5.0 ppm. Analytical methods using gas chromatography with electron capture detector for the determination of fluazinam on dried tea have been developed and validated.

10. *PP 6E8452.* (EPA–HQ–OPP–2016–0166). IR–4, Rutgers University, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, requests to establish tolerances in 40 CFR 180.653 for residues of the herbicide indaziflam (*N*-[(1*R*,2*S*)-2,3-dihydro-2,6-dimethyl-1*H*-inden-1-yl]-6-(1-fluoroethyl)-1,3,5-triazine-2,4-diamine) in or on bushberry, subgroup 13–07B at 0.01 ppm; caneberry, subgroup 13–07A at 0.01 ppm; coffee, green bean at 0.01 ppm; fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 0.01 ppm; hop, dried cones at 0.03 ppm; fruit, stone, group 12–12 at 0.01 ppm; and nut, tree, group 14–12 at 0.01 ppm. Additionally, tolerances are proposed for the crops in the proposed crop subgroup 23A (small fruit, edible peel subgroup) at 0.01 ppm, including acerola; African plum; agritos, almondette; appleberry; arbutus berry; bayberry, red; bignay; breadnut; cabeluda; carandas-plum; Ceylon iron wood; Ceylon olive; cherry-of-the-Rio-Grande; Chinese olive, black; Chinese olive, white; chirauli-nut; cocoplum; desert-date; false sandalwood; fragrant manjack; gooseberry, Abyssinian; gooseberry, Ceylon; gooseberry, otaheite; governor's plum; grumichama; guabiroba; guava berry; guava, Brazilian; guava, Costa Rican; guayabillo; illawarra plum; Indian-plum; Jamaica-cherry; jambolan; kaffir-plum; kakadu plum; kapundung; karnada; lemon aspen; mombin, yellow; monos plum; mountain cherry; olive; persimmon, black; pitomba; plum-of-Martinique; rukam; rumberry; sea grape; sete-capotes; silver aspen; water apple; water pear; water berry; and wax jambu. The analytical method consisting of high pressure liquid chromatography with triple stage quadrupole mass spectrometry (LC/MS/MS) is used to measure and evaluate the chemical indaziflam.

11. *PP 6E8454.* (EPA–HQ–OPP–2016–0171). IR–4, Rutgers University, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, requests to

establish a tolerance in 40 CFR 180.659 for residues of pyroxasulfone (3-[[[5-(difluoromethoxy)-1-methyl-3-(trifluoromethyl)-1*H*-pyrazol-4-yl]methyl]sulfonyl]-4,5-dihydro-5,5-dimethylisoxazole) and its metabolites (5-(difluoromethoxy)-1-methyl-3-(trifluoromethyl)-1*H*-pyrazol-4-carboxylic acid (M–3); 5-(difluoromethoxy)-3-(trifluoromethyl)-1*H*-pyrazol-4-yl]methanesulfonic acid (M–25); 3-[1-carboxy-2-(5,5-dimethyl-4,5-dihydroisoxazol-3-ylthio)ethylamino]-3-oxopropanoic acid (M–28); and 5-(difluoromethoxy)-1-methyl-3-(trifluoromethyl)-1*H*-pyrazol-4-yl]methanesulfonic acid (M–1)) calculated as the stoichiometric equivalent of pyroxasulfone in or on the raw agricultural commodity sunflower subgroup 20B at 0.2 ppm. EPA has approved an analytical enforcement methodology including liquid chromatography, mass spectrometry, and mass spectrometry (LC/MS/MS) to enforce the tolerance expression for pyroxasulfone.

12. *PP 6F8455.* (EPA–HQ–OPP–2016–0218). Syngenta Crop Protection LLC, 410 Swing Rd., P.O. Box 18300, Greensboro, NC 27419–8300 and Canyon Group LLC, 370 S. Main St., Yuma, AZ 85364, request to establish tolerances in 40 CFR 180.481 for residues of the herbicide prosulfuron (N-[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]-2-(3,3,3-trifluoropropyl)benzenesulfonamide) in or on the raw agricultural commodities grain, cereal, forage, fodder, and straw, group 16, fodder at 0.01 ppm; grain, cereal, forage, fodder, and straw, group 16, forage at 0.1 ppm; grain, cereal, forage, fodder, and straw, group 16, hay at 0.2 ppm; grain, cereal, forage, fodder, and straw, group 16, straw at 0.02 ppm; and grain, cereal, group 15 at 0.01 ppm. Analytical method AG–590C has been submitted for the detection and measurement of residue levels of prosulfuron in or on plant commodities. The method is based on cleanup procedures followed by determination by high performance liquid chromatography with ultraviolet (UV) detection. The LOQ is 0.01 ppm. A more recent analytical method, Syngenta Crop Protection Analytical Method REM 137.14, is being submitted for the determination of prosulfuron residues in crops based on cleanup procedures followed by analysis via LC/MS/MS. The LOQ is 0.01 ppm.

Amended Tolerances

1. *PP 5E8422.* (EPA–HQ–OPP–2015–0829). IR–4, Rutgers University, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, requests, upon establishment of the tolerances referenced above under "New Tolerances" for *PP 5E8422,* to remove existing tolerances in 40 CFR 180.599 for residues of the insecticide acequinocyl in or on the following raw agricultural commodities: cucumber at 0.15 ppm; melon, subgroup 9A at 0.15 ppm; cherry, sweet at 0.50 ppm; cherry, tart at 1.0 ppm; fruit, citrus, group 10 at 0.20 ppm; fruit, pome, group 11 at 0.40 ppm; nut, tree, group 14 at 0.02 ppm; pistachio at 0.02 ppm; vegetable, fruiting, group 8 at 0.70 ppm; and okra at 0.70 ppm. The analytical method to quantitate residues of acequinocyl and acequinocyl-OH in/on fruit crops utilizes HPLC using MS/MS detection. The target LOQ is 0.01 ppm.

2. *PP 5E8428.* (EPA–HQ–OPP–2016–0013). IR–4, Rutgers University, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, requests to increase the established tolerance in 40 CFR 180.613 for residues of the insecticide flonicamid, *N*-(cyanomethyl)-4-(trifluoromethyl)-3-pyridinecarboxamide, and its metabolites, TFNA (4-trifluoromethylnicotinic acid), TFNA–AM (4-trifluoromethylnicotinamide), and TFNG, *N*-(4-trifluoromethylnicotinoyl)glycine, calculated as the stoichiometric equivalent of flonicamid, in or on vegetable, fruiting, group 8–10 from 0.40 ppm to 1.50 ppm. The analytical methodology used to measure and evaluate residues of flonicamid in various crops includes an initial extraction, typically with acetonitrile/deionized water, followed by a liquid-liquid partition with ethyl acetate. The final sample solution is quantitated using a liquid chromatograph equipped with a reverse phase column and a triple quadruple mass spectrometer.

3. *PP 5E8434.* (EPA–HQ–OPP–2016–0064). IR–4, Rutgers University, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, requests, upon establishment of the tolerances referenced above under "New Tolerances" for *PP 5E8434,* to remove existing tolerances in 40 CFR 180.579 for residues of fenamidone (4H-imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3-(phenylamino)-, (S)-) in or on the following raw agricultural commodities: *Brassica,* head and stem, subgroup 5A at 5.0 ppm; *Brassica,* leafy greens, subgroup 5B at 55 ppm; cotton, undelinted seed at 0.02 ppm; cilantro, leaves at 60 ppm; and vegetable, leafy, except *Brassica,* group 4 at 60 ppm. Residues are quantified by HPLC with LC/MS/MS. The method LOQ is 0.02 ppm or lower for fenamidone in all raw agricultural commodities and processed fractions.

4. *PP 5E8437.* (EPA–HQ–OPP–2016–0049). IR–4, Rutgers University, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, requests to amend 40 CFR 180.685 by removing the established tolerances for the residues of the fungicide oxathiapiprolin, 1-[4-[4-[5-(2,6-difluorophenyl)-4,5-dihydro-3-isoxazolyl]-2-thiazolyl]-1-piperidinyl]-2-[5-methyl-3-(trifluoromethyl)-1H-pyrazol-1-yl]-ethanone, including its metabolites and degradates, in or on leafy greens, subgroup 4A at 15 ppm; and *Brassica,* head and stem, subgroup 5A at 1.5 ppm upon establishment of the proposed tolerances referenced above under "New Tolerances" for *PP 5E8437.* Adequate analytical methodology, high pressure liquid chromatography with MS/MS detection, is available for enforcement purposes.

5. *PP 5F8414.* (EPA–HQ–OPP–2015–0791). Valent U.S.A. Corp., 1600 Riviera Ave., Suite 200, Walnut Creek, CA 94596, requests to amend the tolerances in 40 CFR 180.627 for residues of the fungicide fluopicolide in or on vegetables, tuberous and corm (subgroup 1C) at 0.10 ppm; and potato processed waste at 0.25 ppm. Practical analytical methods for detecting and measuring levels of fluopicolide and its metabolites have been developed, validated, and submitted for all appropriate plant and animal matrices.

6. *PP 5F8429.* (EPA–HQ–OPP–2016–0029). Gowan Co., P.O. Box 5569, Yuma, AZ 85366–5569, requests to amend 40 CFR 180.632 by removing the established tolerance for residues of the miticide/insecticide fenazaquin (4-[2-[4-(1,1,-dimethylethyl) phenyl] ethoxy] quinazoline) in or on the raw commodity almond at 0.02 ppm upon establishment of the proposed tolerance referenced above under "New Tolerances" for *PP 5F8429.*

7. *PP 5F8441.* (EPA–HQ–OPP–2016–0049). Syngenta Crop Protection LLC, 410 Swing Rd., P.O. Box 18300, Greensboro, NC 27419–8300, requests to amend the tolerance in 40 CFR 180.685 for residues of the fungicide oxathiapiprolin in or on tuberous and corm vegetables, subgroup 1C at 0.04 ppm. The analytical method using high pressure liquid chromatography with MS/MS detection is used to measure and evaluate the chemical residues of oxathiapiprolin.

8. *PP 6E8446.* (EPA–HQ–OPP–2016–0128). IR–4, Rutgers University, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, requests to amend the tolerances in 40 CFR 180.620 for residues of the insecticide etofenprox (2-(4-ethoxyphenyl)-2-methylpropyl 3-

phenoxybenzyl ether) in or on all food commodities (including feed commodities) not otherwise listed from 5.0 ppm to 0.40 ppm. This amendment may potentially impact/reduce the tolerances established in or on livestock commodities. The analytical method consisting of LC/MS/MS is used to measure and evaluate the chemical etofenprox.

9. *PP 6E8452.* (EPA–HQ–OPP–2016–0166). IR–4, Rutgers University, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, requests, upon establishment of the tolerances referenced above under "New Tolerances" for *PP 6E8452,* to remove existing tolerances in 40 CFR 180.653 for residues of the herbicide indaziflam (*N*-[(1*R*,2*S*)-2,3-dihydro-2,6-dimethyl-1*H*-inden-1-yl]-6-(1-fluoroethyl)-1,3,5-triazine-2,4-diamine) in or on fruit, stone, group 12 at 0.01 ppm; nut, tree, group 14 at 0.01 ppm; grape at 0.01 ppm; and pistachio at 0.01 ppm. The analytical method consisting of LC/MS/MS is used to measure and evaluate the chemical indaziflam.

New Tolerance Exemptions

1. *PP IN–10891.* (EPA–HQ–OPP–2016–0123). BASF Corp., 26 Davis Dr., Research Triangle Park, NC 27709, requests to establish an exemption from the requirement of a tolerance for residues of *Bacillus simplex* strain BU288 when used as a pesticide inert ingredient (emulsifier) applied to growing crops and raw agricultural commodities after harvest under 40 CFR 180.910. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance.

2. *PP IN–10907.* (EPA–HQ–OPP–2016–0201). Keller and Heckman, LLP, 1001 G St. NW., Suite 500 West, Washington, DC 20001 (on behalf of Trinseo LLC, 1000 Chesterbrook Blvd., Berwyn, PA 19312–1084), requests to establish an exemption from the requirement of a tolerance for residues of butanedioic acid, 2-methylene-, polymer with 1,3-butadiene, ethenylbenzene and 2-hydroxyethyl 2-propenoate (CAS Reg. No. 36089–06–2) when used as an inert ingredient (emulsifier or binder) in pesticide formulations under 40 CFR 180.960. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance.

Authority: 21 U.S.C. 346a.

Dated: May 6, 2016.

Robert C. McNally,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2016–11835 Filed 5–18–16; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 81, No. 97
Thursday, May 19, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Barenbrug USA of Tangent, Oregon, an exclusive license to the variety of tall fescue described in Plant Variety Protection Certificate Application Number 201500219, "FESCUE, TALL (SYN1RR)", filed on December 17, 2014.

DATES: Comments must be received on or before June 20, 2016.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: Mojdeh Bahar of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's rights in this plant variety are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this plant variety as Barenbrug USA of Tangent, Oregon has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Mojdeh Bahar,
Assistant Administrator.

[FR Doc. 2016–11800 Filed 5–18–16; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Oceanus Seafood, LLC of Homestead, Florida, an exclusive license to U.S. Patent Application Serial No. 14/479,654, "METHOD AND SYSTEM FOR PRODUCING AQUACULTURE FEED", filed on September 8, 2014.

DATES: Comments must be received on or before June 20, 2016.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: Mojdeh Bahar of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Oceanus Seafood, LLC of Homestead, Florida has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Mojdeh Bahar,
Assistant Administrator.

[FR Doc. 2016–11798 Filed 5–18–16; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Barenbrug USA of Tangent, Oregon, an exclusive license to the variety of tall fescue described in Plant Variety Protection Certificate Application Number 201500220, "FESCUE, TALL (SYN1)", filed on December 17, 2014.

DATES: Comments must be received on or before June 20, 2016.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: Mojdeh Bahar of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's rights in this plant variety are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this plant variety as Barenbrug USA of Tangent, Oregon has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Mojdeh Bahar,

Assistant Administrator.

[FR Doc. 2016–11813 Filed 5–18–16; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Gila National Forest, Quemado Ranger District; New Mexico; Luna Restoration Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Gila National Forest will prepare an Environmental Impact Statement to evaluate a proposed action on a landscape level project to improve forest health within 185,586 acres Luna planning area on the Quemado Ranger District.

The full text and maps of the proposed action will be located on the Forest's Web site at *http://www.fs.usda.gov/detail/gila/home/?cid=STELPRD3828973.*

DATES: Comments concerning the scope of the analysis must be received by July 5, 2016. The draft environmental impact statement is expected December, 2016 and the final environmental impact statement is expected July 2017.

ADDRESSES: Send written comments to Quemado Ranger District, ATTN: District Ranger, P.O. Box 159, Quemado, NM 87829. Comments may also be sent via email to *comments-southwestern-gila-quemado@fs.fed.us,* or via facsimile to 575–773–4114.

An Open House is scheduled for Wednesday June 8, 2016, 5 to 7 p.m. at the Luna Community Center, Luna, NM.

FOR FURTHER INFORMATION CONTACT: Emily Irwin, District Ranger, Quemado Ranger District, at (575) 773–4678 or *comments-southwestern-gila@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of the Luna Restoration Project is to create and maintain a healthy resilient landscape and watersheds capable of delivering benefits to the public including clean air and water, habitat for native fish and wildlife, forest products, and outdoor recreation opportunities. There is a need to:

- Reduce the impacts of high severity fire on natural and cultural resources, private inholdings, communities, infrastructure, and livelihoods within the planning area;
- Implement vegetative treatments to restore departed landscapes that are overstocked, encroached, and at risk to fire, disease, insects, and other climate stressors;
- Implement treatments in watershed that are not properly functioning;
- Improve water quality by hardening stream crossings and performing road maintenance;
- Continue to provide the wide range of forest products that are important to the culture, tradition and livelihoods of local communities;
- Protect and restore threatened and endangered species and habitat;
- Provide opportunities for OHV use, enjoyment, and access from the community of Luna;
- Provide permanent water to support wildlife and livestock; and
- Improve rangeland, wildlife, aquatic and riparian habitat.

Proposed Action

In response to the purpose and need, the Gila National Forest proposes to conduct a wide variety of restoration, maintenance, and improvement projects within the Luna planning area (185,570 acres) on the Quemado Ranger District.

Vegetation treatments would be accomplished by hand or mechanized equipment, cutting trees individually or in groups. Maintenance and restoration activities are prosed on approximately 73,446 acres of woodland (*e.g.* pinyon juniper, pinyon pine) and forest (ponderosa pine and mixed conifer) stands.

Grassland maintenance and restoration treatments are proposed on approximately 23,373 acres. Ponderosa pine and pinyon juniper have encroached, become established, and continue to spread into the grasslands. Proposed activities consist of cutting ponderosa pine and pinyon-juniper by hand or mechanized equipment, to reduce tree canopy cover to less than 10% in grasslands.

Rabbit brush treatment consists of mowing with rubber tired equipment during the dormant season (late fall to early winter) on approximately 100 acres for consecutive years to improve rangeland condition on the Centerfire Allotment. An additional 100 to 1,000 acres may be treated depending on monitoring results of the initial 100 acres.

Thin small diameter trees <9 inches, pile burn or broadcast burn approximately 1,464 acres within Mexican Spotted Owl protected activity centers. No activities would take place between March 1 to August 31 to avoid disturbance during breeding season.

Cut and prescribe burn Gambel oak and mountain mahogany stands to promote new growth and sprouting in various locations across the planning area for wildlife, especially game species. This would be accomplished with other vegetation and fuel treatments.

Fall snags over approximately 1,955 acres within the Wallow Fire (2011) for site preparation (planting or natural regeneration of trees). Snags would be cut by hand or by mechanical equipment and piled, decked, removed and/or left where felled. Decks may be burned.

Use prescribe fire exclusively to treat approximately 12,898 acres to maintain and/or reduce fuel loadings. Use prescribe fire in areas identified for vegetation treatments (approximately 70,000 to 100,000 acres). Prescribed fire can be implemented prior and after proposed vegetation treatments. Areas identified for prescribed fire are available for re-entry if objectives are not fully achieved as a result of initial treatments or for maintenance

Improve and restore stream and riparian habitat through various activities such as constructing exclosures, planting riparian species, installing bank stabilization structures; removing invasive or non-native plant species; placing weirs to restore channel gradient; improving stream crossing, and installing and/or upgrading road drainage features.

Add new or upgrade existing water systems on the Luna, Centerfire, and Mangitas allotments to increase livestock and wildlife distribution to benefit rangeland conditions, including watershed, soils, and stream resources.

Conduct heavy maintenance and upgrade drainage features on forest roads to improve water quality. Harden crossings on roads and motorized trails to improve accessibility and reduce impacts to aquatic species and habitat.

Decommission approximately 121 miles of closed roads to improve watershed condition and reduce wildlife habitat fragmentation. Decommission user created routes within the planning area.

Add and designate approximately 20 miles of routes for ATV use, creating loop and connector route opportunities around the Luna Community.

Responsible Official

Gila Forest Supervisor.

Nature of Decision To Be Made

The decision to be made will be whether or not to implement the proposed action or an alternative to the proposed action and what mitigation measures would be required. The Forest Supervisor will also decide which forest project-level plan amendments to adopt.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. An Open House is scheduled for Wednesday June 8, 2016, 5 to 7 p.m. at the Luna Community Center, Luna, NM to provide an opportunity to review project maps, ask questions, and provide input to the proposed project.

It is important that reviewers provide their comments at such times and in such a manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: May 10, 2016.

Adam Mendonca,

Forest Supervisor.

[FR Doc. 2016–11801 Filed 5–18–16; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Prince of Wales Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Prince of Wales Resource Advisory Committee (RAC) will meet in Craig, Alaska. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf.*

DATES: The meeting will be held June 6, 2016, at 10:00 a.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at Craig Ranger District, 504 9th Street, Craig, Alaska. If you wish to attend via teleconference, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Craig Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Amy Manuel, RAC Coordinator, by phone at 907–228–6200 or via email at *amymmanuel@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and recommend projects authorized under Title II of the Act.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 1, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Matthew Anderson, Designated Federal Officer, P.O. Box 500, Craig, Alaska 99921; by email to *mdanderson@fs.fed.us,* or via facsimile to 907–826–2972.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: May 16, 2016.

Matt D. Anderson,

District Ranger, DFO.

[FR Doc. 2016–11797 Filed 5–18–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee (RAC) will meet in Yreka, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://cloudapps-usda-gov.force.com/FSSRS/RAC_Meeting_Page?id=a2zt00000004CyPAAU.*

DATES: The meeting will be held June 6, 2016, at 5:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Klamath National Forest (NF) Supervisor's Office, Conference Room, 1711 South Main Street, Yreka, California.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Klamath NF Supervior's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Natalie Stovall, RAC Coordinator, by phone at 530–841–4411 or via email at *nstovall@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Approve prior meeting notes,
2. Update on ongoing projects,
3. Public comment period,
4. Review meeting schedule,
5. Proposal reviews,
6. Vote on proposals, and
7. Schedule meeting for July.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments may be sent to Natalie Stovall RAC Coordinator, 1711 S. Main Street, Yreka, California 96097; by email to *nstovall@fs.fed.us* or via facsimile to 530–841–4571.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: May 10, 2016.

Patricia A. Grantham,

Forest Supervisor.

[FR Doc. 2016–11802 Filed 5–18–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this Notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for "Section 515 Multifamily Preservation and Revitalization (MPR) Demonstration Program for Fiscal Year 2006".

DATES: Comments on this Notice must be received by July 18, 2016 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Dean Greenwalt, Special Projects Coordinator, Multi-Family Housing and Preservation and Direct Loan Division, STOP 0782—Room 1263S, 1400 Independence Avenue SW., Washington, DC 20250.

SUPPLEMENTARY INFORMATION:

Title: Section 515 Multifamily Preservation and Revitalization (MPR) Demonstration Program.

OMB Number: 0575–0190.

Expiration Date of Approval: September 30, 2016.

Type of Request: Extension of currently approved information collection.

Abstract: The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, 2006 (Pub. L. 109–97) provides funding for, and authorizes Rural Development to conduct a demonstration program for the preservation and revitalization of the Section 515 Multi-Family Housing portfolio. Section 515 of the Housing Act of 1949 (42 U.S.C. 1485) provides Rural Development the authority to make loans for low-income Multi-Family Housing and related facilities.

Rural Development refers to this program as Multifamily Preservation and Revitalization (MPR) Demonstration Program. A Notice of Solicitation for Applications (NOSA) sets forth the eligibility and application requirements. Information will be collected from applicants and grant recipients by Rural Development staff in its Local, Area, State, and National Offices. This information will be used to determine applicant eligibility for this demonstration program. If an applicant proposal is selected, that applicant will be notified of the selection and given the opportunity to submit a formal application.

This MPR demonstration program continues to adjust the various opportunities available to demonstrate effective methods of providing the needed financial resources not otherwise available to current owners and transferees. Using alternative forms of financing, these owners will preserve existing Agency-financed Rural Rental Housing and Farm Labor Housing and extend the property's useful life for tenants meeting RD eligibility requirements. Since the inception of the MPR demonstration program in 2006, revisions and adjustments in the nature of the program have necessitate certain revisions in the context, formatting and use of the original forms in this package to permit RD's ability to provide these needed financial opportunities. To meet current Agency NOSA, regulatory and industry standards, the following forms are being revised, reformatted and/or renamed in some instances to provide clarity and consistency in their practical use and application:

- MPR Pre-Application
- Debt Deferral Agreement
- Restrictive-Use Covenant
- Restrictive-Use Subordination Agreement
- MPR Grant Agreement
- MPR Loan and Grant Resolution (non-profit corporation)
- Restructuring Conditional Commitment (renamed: MPR Offer and Conditional Commitment)
- Addendum to Debt Deferral Agreement
- Subordination Agreement

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Individuals, partnerships, public and private non-profit corporations, agencies, institutions, organizations, and Indian tribes.

Estimated Number of Respondents: 1,500.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 11,610.

Estimated Total Annual Burden on Respondents: 10,549.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0040.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Rural Development, including whether the information will have practical utility; (b) the accuracy of Rural Development's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, Support Services

Division, U.S. Department of Agriculture, Support Services Division, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250. All responses to this Notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *By mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

USDA is an equal opportunity provider and employer.

Dated: May 13, 2016.

Tony Hernandez,

Administrator, Rural Housing Service.

[FR Doc. 2016–11909 Filed 5–18–16; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Submission for OMB Review; Comment Request

May 16, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by June 20, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Housing Service

Title: 7 CFR 1944–N—Housing Preservation Grants.

OMB Control Number: 0575–0115.

Summary of Collection: The Rural Housing Service (RHS) is authorized to make grants to eligible applicants to provide repair and rehabilitation assistance so that very low- and low-income rural residents can obtain adequate housing. Such assistance is made by grantees to very low- and low-income persons, and to co-ops. Grant funds are used by grantees to make loans, grants, or other comparable assistance to eligible homeowners, rental unit owners, and co-ops for repair and rehabilitation of dwellings to bring them up to code or minimum property standards. These grants were established by Public Law 98–181, the Housing Urban Rural Recovery Act of 1983, which amended the Housing Act of 1949 (Pub. L. 93–383) by adding section 533, 42 U.S.C. S 2490(m), Housing Preservation Grants.

Need and Use of the Information: An applicant will submit a "Statement of Activity" that describes its proposed program. RHS will collect information to determine eligibility for a grant to justify its selection of the applicant for funding; to report program accomplishments and to justify and support expenditure of grant funds. RHS uses this information to determine if the grantee is complying with its grant agreement and to make decisions regarding continuing with modifying, or terminating grant assistance. If the information were not collected and presented to RHS, the Agency could not monitor the program or justify disbursement of grant funds.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 1,246.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly.

Total Burden Hours: 7,562.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–11831 Filed 5–18–16; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Rural Utilities Service, an agency of the United States Department of Agriculture (USDA), hereinafter referred to as Agency, invites comments on this information collection for which the

Agency intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by July 18, 2016.

FOR FURTHER INFORMATION CONTACT: Thomas P. Dickson, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave. SW., STOP 1522, Room 5164 South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492, FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that the Agency is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Thomas P. Dickson, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, Room 5164, 1400 Independence Ave. SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

Title: Public Television Station Digital Transition Grant Program.

OMB Control Number: 0572–0134.

Type of Request: Extension of a currently approved information collection.

Abstract: As part of the nation's evolution to digital television, the Federal Communications Commission had ordered all television broadcasters to initiate the broadcast of a digital television signal. Public television stations rely largely on community financial support to operate. In many rural areas the cost of the transition to digital broadcasting may exceed community resources. Since rural communities depend on public television stations for services ranging from educational course content in their schools to local news, weather, and agricultural reports, any disruption of public television broadcasting would be detrimental.

Initiating a digital broadcast requires the installation of a new antenna, transmitter or translator, and new digital program management facilities consisting of processing and storage systems. Public television stations use a combination of transmitters and translators to serve the rural public. If the public television station is to perform program origination functions, as most do, digital cameras, editing and mastering systems are required. A new studio-to-tower site communications link may be required to transport the digital broadcast signal to each transmitter and translator. The capability to broadcast some programming in a high definition television format is inherent in the digital television standard, and this can require additional facilities at the studio. These are the new components of the digital transition.

In designing the national competition for the distribution of these grant funds, priority is given to public television stations serving the areas that would be most unable to fund the digital transition without a grant. The largest sources of funding for public television stations are public membership and business contributions. In rural areas, lower population density reduces the field of membership, and rural areas have fewer businesses per capita than urban and suburban areas. Therefore, rurality is a primary predictor of the need for grant funding for a public television station's digital transition. In addition, some rural areas have per capita income levels that are lower than the national average, and public television stations covering these areas in particular are likely to have difficulty funding the digital transition. As a result, the consideration of the per capita income of a public television station's coverage area is a secondary predictor of the need for grant funding. Finally, some public television stations may face special difficulty accomplishing the transition, and a third scoring factor for station hardship will account for conditions that make these public television stations less likely to accomplish the digital transition without a grant.

Estimated Number of Respondents: 30.

Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Estimated Number of Responses per Respondent: 1.

Estimate of annual responses: Public reporting burden for this collection of information is estimated to be 30 hours annual responses.

Estimated Total Annual Burden on Respondents: 744 hours.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853. FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 10, 2016.

Brandon McBride,

Administrator, Rural Utilities Service.

[FR Doc. 2016–11832 Filed 5–18–16; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which it intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by July 18, 2016.

FOR FURTHER INFORMATION CONTACT: Thomas P. Dickson, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave. SW., STOP 1522, Room 5164, South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. Fax: (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that

RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Thomas P. Dickson, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave. SW., Washington, DC 20250–1522. FAX: (202) 690–4492.

Title: Distance Learning and Telemedicine Loan and Grant Program.

OMB Control Number: 0572–0096.

Type of Request: Extension of a currently approved information collection package.

Abstract: The Rural Utilities Service's (RUS) Distance Learning and Telemedicine (DLT) Loan and Grant program provides loans and grants for advanced telecommunications services to improve rural areas' access to educational and medical services. The various forms and narrative statements required are collected from the applicants (rural community facilities, such as schools, libraries, hospitals, and medical facilities, for example). The purpose of collecting the information is to determine such factors as eligibility of the applicant; the specific nature of the proposed project; the purposes for which loan and grant funds will be used; project financial and technical feasibility; and, compliance with applicable laws and regulations. In addition, for grants funded pursuant to the competitive evaluation process, information collected facilitates RUS' selection of those applications most consistent with DLT goals and objectives in accordance with the authorizing legislation and implementing regulation.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.45 hours per response.

Respondents: Business or other for-profit; Not-for-profit institutions; and State, Local or Tribal Government.

Estimated Number of Respondents: 190.

Estimated Number of Responses per Respondent: 23.3.

Estimated Total Annual Burden on Respondents: 11,640 hours.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 690–1078. FAX: (202) 720–7853.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 10, 2016.

Brandon McBride,

Administrator, Rural Utilities Service.

[FR Doc. 2016–11833 Filed 5–18–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–830]

Carbon and Certain Alloy Steel Wire Rod From Mexico: Final Results of Antidumping Duty Administrative Review; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On November 10, 2015, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on carbon and certain alloy steel wire rod (wire rod) from Mexico. The period of review (POR) is October 1, 2013, through September 30, 2014, and the review covers two producers/exporters of subject merchandise: ArcelorMittal Las Truchas, S.A. de C.V. (AMLT) and Deacero S.A.de C.V.[1]

Based on our analysis of the comments received, we made certain changes in the margin calculations. The final results, consequently, differ from the preliminary results. The final weighted-average dumping margins for the reviewed producers/exporters are listed below in the section entitled "Final Results of Review."

DATES: Effective May 19, 2016.

FOR FURTHER INFORMATION CONTACT: James Terpstra (for Deacero) and Jolanta Lawska (for AMLT), AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone: 202–482–3965 and 202–482–8362, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 10, 2015, the Department published in the **Federal Register** the *Preliminary Results* of the antidumping duty administrative review of wire rod from Mexico.[2] We invited interested parties to comment on our *Preliminary Results.* On December 10, 2015, the Department received case briefs from Deacero, AMLT,[3] Gerdau Ameristeel USA, INC., and ArcelorMittal USA LLC, (collectively, Petitioners), and Nucor Corporation (Nucor).[4] On December 21, 2015, all parties submitted rebuttal briefs. On January 12, 2016, the Department extended the deadline for the final results of this administrative review until May 9, 2016,[5] which the Department tolled to May 13, 2016.[6] The Department conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

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[1] During this administrative review, we also examined Deacero USA, Inc., the U.S.-based affiliate of Deacero S.A. de C.V. We refer to these two companies collectively as Deacero.

[2] *See Carbon and Certain Alloy Steel Wire Rod from Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014,* 80 FR 69641 (November 10, 2014) (*Preliminary Results*) and accompanying Issues and Decision Memorandum (Preliminary Decision Memorandum).

[3] The Department rejected AMLT's originally filed case brief because it contained untimely filed new factual information. *See* Memorandum "Rejection of Case Brief Submitted by AMLT" dated January 11, 2016. On January 20, 2016, AMLT submitted a revised case brief.

[4] Nucor Corporation (Nucor) is a domestic interested party.

[5] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations from Erin Begnal, Director, Antidumping and Countervailing Duty Operations, Office III through Eric B. Greynolds, Program Manager, Antidumping and Countervailing Duty Operations, Office III regarding Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Mexico: Extension of Time Limit for Final Results dated January 12, 2016.

[6] As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll all administrative deadlines due to the closure of the Federal Government. *See* memorandum from Ron Lorentzen, Acting Assistant Secretary for Enforcement & Compliance, "Tolling of Administrative Deadlines as a Result of the Government Closure During Snowstorm Jonas," dated January 27, 2016, in which the Department extended all deadlines in this segment of the proceeding by four business days. Pursuant to this memorandum, the revised deadline for the preliminary results is May 13, 2016.

Period of Review

The POR covered by this review is October 1, 2013, through September 30, 2014.

Scope of the Order

The merchandise subject to this order is carbon and certain alloy steel wire rod. The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059. Although the HTS numbers are provided for convenience and customs purposes, the written product description remains dispositive.[7]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding are addressed in the Issues and Decision Memorandum. A list of the issues that parties raised and to which we responded is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit (CRU), Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://trade.gov/enforcement.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we made certain changes to the calculations. These changes are fully discussed in the Issues and Decision Memorandum and the Calculation Memoranda for the final results.[8]

Final Results of Review

As a result of this review, we determine that the following margins for the POR:

Producer/exporter	Weighted-average dumping margin (percent)
Deacero S.A. de C.V	1.54
ArcelorMittal Las Truchas, S.A. de C.V	2.59

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act, and 19 CFR 351.212(b), the Department has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.[9] For any individually examined respondents whose weighted-average dumping margin is above *de minimis,* we calculated importer-specific ad valorem assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.,* at or above 0.5 percent), the Department will issue instructions directly to CBP to assess antidumping duties on appropriate entries.

The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2) of the Act: (1) The cash deposit rates for Deacero and AMLT will be the rates established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 20.11 percent, the all-others rate established in the investigation.[10] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of

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[7] For a complete description of the scope of the order, *see* Decision Memorandum for Final Results of 2013/14 Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Mexico (Final Decision Memorandum), dated concurrently with and hereby adopted by this notice.

[8] *See* "Final Results in the 9th Administrative Review on Carbon and Certain Alloy Steel Wire Rod from Mexico: Calculation Memorandum for Deacero S.A. de C.V. and Deacero USA, Inc. (collectively, Deacero)," from James Terpstra, Senior International Trade Analyst, AD/CVD Operations, Office III, to The File, through Eric B. Greynolds, Program Manager, AD/CVD Operations, Office III, and "Final Results in the 9th Administrative Review on Carbon and Certain Alloy Steel Wire Rod from Mexico: Calculation Memorandum for ArcelorMittal Las Truchas, S.A. de C.V. (AMLT)" from Jolanta Lawska, International Trade Analyst, AD/CVD Operations, Office III, to The File, through Eric B. Greynolds, Program Manager, AD/CVD Operations, Office III, dated concurrently with this notice (collectively, Calculation Memoranda for Final Results).

[9] For assessment purposes, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[10] *See Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine,* 67 FR 65945 (October 29, 2002).

APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: May 13, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Final Decision Memorandum

I. Summary
II. Background
III. List of Comments

Deacero

Comment 1: Adjustment to the General and Administrative (G&A) Expense Ratio
Comment 2: Whether the Department Erred in the Net Comparison-Market Price (CMNETPRI) Calculation
Comment 3: Whether the Department Erred in Currency Conversion Calculation
Comment 4: Treatment of Inland Insurance Verification Corrections
Comment 5: Nucor's Clerical Error Corrections
Comment 6: Whether to Disallow Certain Post-Sale Price Adjustments
Comment 7: Whether Deacero Engaged in "Targeted Dumping"

AMLT

Comment 8: Whether AMLT's Depreciation Should Be Adjusted to Reflect Mexican Generally Accepted Accounting Principles (GAAP)
Comment 9: Treatment of AMLT's Fixed Overhead Costs
Comment 10: Treatment of AMLT's Additional Mexican GAAP Costs
IV. Scope of the Order
V. Discussion of Comments
VI. Recommendation

[FR Doc. 2016–11858 Filed 5–18–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Open Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, June 15, 2016, from 8:30 a.m. until 5:00 p.m. Eastern Time, Thursday, June 16, 2016, from 8:30 a.m. until 5:00 p.m. Eastern Time, and Friday, June 17, 2016, from 8:30 a.m. until 12:00 p.m. Eastern Time. All sessions will be open to the public.

DATES: The meeting will be held on Wednesday, June 15, 2016, from 8:30 a.m. until 5:00 p.m. Eastern Time, Thursday, June 16, 2016, from 8:30 a.m. until 5:00 p.m. Eastern Time, and Friday, June 17, 2016, from 8:30 a.m. until 12:00 p.m. Eastern Time.

ADDRESSES: The meeting will take place at the United States Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Annie Sokol, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–2006, or by email at: *annie.sokol@nist.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, June 15, 2016, from 8:30 a.m. until 5:00 p.m. Eastern Time, Thursday, June 16, 2016, from 8:30 a.m. until 5:00 p.m. Eastern Time, and Friday, June 17, 2016, from 8:30 a.m. until 12:00 p.m. Eastern Time. All sessions will be open to the public. The ISPAB is authorized by 15 U.S.C. 278g–4, as amended, and advises the National Institute of Standards and Technology (NIST), the Secretary of Homeland Security, and the Director of the Office of Management and Budget (OMB) on information security and privacy issues pertaining to Federal government information systems, including thorough review of proposed standards and guidelines developed by NIST. Details regarding the ISPAB's activities are available at *http://csrc.nist.gov/groups/SMA/ispab/index.html.*

The agenda is expected to include the following items:

—Presentation and discussion on Internet of Things,
—Presentation on Block Chain Protocol and the emerging ecosystem,
—Legislative updates relating to security and privacy,
—OMB updates relating to information security, privacy, cybersecurity and quantum cryptography,
—Presentation on secure engineering and cybersecurity resilience,
—Presentation on high performance computing security,
—Updates from NIST on Privacy Engineering Framework,
—GAO Reports presentation, and
—Updates on NIST Computer Security Division.

Note that agenda items may change without notice. The final agenda will be posted on the Web site indicated above. Seating will be available for the public and media. No registration is required to attend this meeting.

Public Participation: The ISPAB agenda will include a period of time, not to exceed thirty minutes, for oral comments from the public (Friday, June 17, 2016, between 10:00 a.m. and 10:30 a.m.). Speakers will be selected on a first-come, first-served basis. Each speaker will be limited to five minutes. Questions from the public will not be considered during this period. Members of the public who are interested in speaking are requested to contact Annie Sokol at the contact information indicated in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements. In addition, written statements are invited and may be submitted to the ISPAB at any time. All written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930.

Kevin Kimball,

Chief of Staff.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE473

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to an Anchor Retrieval Program in the Chukchi and Beaufort Seas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from Fairweather, LLC (Fairweather) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to an anchor retrieval

program in the Chukchi and Beaufort seas, Alaska, during the open-water season of 2016. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to Fairweather to incidentally take, by Level B Harassments, marine mammals during the specified activity.

DATES: Comments and information must be received no later than June 20, 2016.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *itp.guan@noaa.gov.* Comments sent via email, including all attachments, must not exceed a 25-megabyte file size. NMFS is not responsible for comments sent to addresses other than those provided here.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.html* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

An electronic copy of the application may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.html.* The following associated documents are also available at the same internet address: Plan of Cooperation. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

NMFS is also preparing draft Environmental Assessment (EA) in accordance with the National Environmental Policy Act (NEPA) and will consider comments submitted in response to this notice as part of that process. The draft EA will be posted at the foregoing internet site.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On February 2, 2016, NMFS received an application from Fairweather for the taking of marine mammals incidental to conducting anchor retrieval activities in the U.S. Chukchi and Beaufort seas. After receiving NMFS comments, Fairweather made revisions and updated its IHA application and marine mammal mitigation and monitoring plan on February 8, 2016. NMFS considers the IHA application complete as of February 8, 2016.

Fairweather proposes to retrieve anchor equipment left by Shell Offshore, Inc. (Shell) during its 2012 and 2015 exploration drilling programs in the U.S. Chukchi and Beaufort seas. The proposed activity would occur between July 1 and October 31, 2016. Noise generated from anchor handling activities and vessel's dynamic positioning thrusters could impact marine mammals in the vicinity of the activities. Take, by Level B harassments, of individuals of eight species of marine mammals may result from the specified activity.

Description of the Specified Activity

Dates and Duration

Fairweather's proposed anchor retrieval activity is planned for the 2016 open-water season (July through October, 2016). Vessels will mobilize from Dutch Harbor in late June to arrive in Kotzebue area by early July to start the anchor retrieval program. Fairweather anticipates operations will be complete by late August with all vessels out of the theater, with the exception of the Norseman II, which would remain in the area for final data collection until October.

At each site, active anchor retrieval activities with the use of thrusters are expected to occur within two to seven days with the thrusters operating only part of the time; unseating typically takes less than half an hour for each anchor. Additionally, locating anchors using high-frequency sonar are expected to take one to three days at each site before and after anchor retrieval, although take of marine mammals is not expected to result from exposure to these high frequency sources. Therefore, operations that may result in incidental harassment to marine mammals would occur over approximately 10 days total on each site throughout the season with the noise sources operating only part of the time over those days.

Specified Geographic Region

Fairweather will retrieve mooring systems that were left as part of Shell's exploration program at five locations (Figure 1 of the IHA application): (1) Good Hope Bay in Kotzebue Sound, (2) Burger A site in the Chukchi Sea, (3) Burger V site in the Chukchi Sea, (4) Kakapo in the Chukchi Sea, and (5) Sivulliq site in the Beaufort Sea. Using four specialized Anchor Handling Towing Supply Vessels (AHTSVs), the mooring systems are scheduled for retrieval in the open water season of 2016 (July through September). AHTSVs will mobilize from Dutch Harbor in late June to arrive in Kotzebue area by early July. Multiple retrieval scenarios have been developed to retrieve all of the systems within one season; actual timing of retrieval at each of the sites will depend on vessel configuration, ice, weather, and timing of subsistence activities in Kotzebue and Beaufort Sea.

The Kotzebue location is approximately 20 kilometers (km, 12 miles [mi]) offshore of the village of Kotzebue, on the northwest coast of

Alaska. The average depth in the Kotzebue project area is approximately 9 meters (m, 29 feet [ft]). The Burger A and Burger V locations are approximately 100 km (64 mi) offshore and approximately 126 km (78 mi) northwest of the closest village of Wainwright. Water depths in the Burger prospect area average 40–48 m (130–157 ft). The Kakapo location is approximately 110 km (68 mi) offshore to the northwest of the village of Point Lay, also on the northwest coast of Alaska. Water depths in the Kakapo area are similar to Burger, averaging 40 m (130 ft). The Sivulliq location is approximately 25 km (15 mi) offshore of the North Slope of Alaska in between Prudhoe Bay to the west and Kaktovik to the east. The average water depth at the Sivulliq project area is approximately 30–35 m (98–115 ft).

Detailed Description of Activities

I. Anchor Retrieval

The goal of the retrieval program will be to complete operations efficiently and safely within one season, taking into consideration ice, weather, and subsistence harvest activities. Preliminary calculations indicate the vessels will have sufficient fuel onboard to have endurance to remain offshore with minimal fuel transfers at sea. The number of crew changes and vessel resupply will depend on the progress of the retrieval program, but, if necessary, will take place in Kotzebue, Wainwright, or Prudhoe Bay. Through the Olgoonik Fairweather, LLC joint venture, Fairweather has provided crew change and logistic support for multiple vessels in all three locations since 2008. A small, flat-bottom crew change vessel is available at each location to transfer personnel, equipment, and groceries from shore to the AHTSV. Helicopters will not be used in this program, unless in an emergency situation.

Vessels will mobilize from Dutch Harbor in late June to arrive in Kotzebue area by early July. Delmar (the owners of some of the mooring systems and onboard anchor handling technicians) and Fairweather have developed multiple scenarios to retrieve all of the systems within one season. Each AHTSV vessel is a different size and each will hold different amounts of equipment depending on deck space, storage reel space, chain locker space, storage location, and equipment type to meet stability requirements. If subsistence harvest activities are taking place, Fairweather will not retrieve anchors until cleared (by the communities) to do so. The vessels will move into the Chukchi Sea to retrieve the Burger and Kakapo anchors, depending on ice presence. As soon as the passage to Barrow around Point Barrow is ice free and safe for passage to the Beaufort Sea, two of the four vessels will immediately transit to the Sivulliq site. Typically, this occurs in late July/early August. Retrieval operations will be completed and vessels out of the Beaufort prior to the August 25th commencement for the Nuiqsut/Kaktovik bowhead whale harvest. Once the Sivulliq anchors are retrieved, the two vessels will return to the Chukchi Sea to complete any remaining operations.

Once on site, the retrieval of each anchor and associated mooring system typically takes approximately four hours to complete. There is typically one to two vessels onsite, only one of which will be retrieving an anchor. Depending on weather and number of the mooring lines/anchors, one site is expected be completed between two and seven days. Anchors will be retrieved in one of two ways. The first is by locating the float rope connected to each of the mooring systems with the remotely operated vehicle (ROV) and retrieving the anchor from the opposite side of the anchor, working towards the anchor itself. The second method will be employed if the float rope cannot be located, or the vessel retrieving does not have an ROV. A grappling hook will be deployed and to grasp the mooring chain along the anchoring system. From that point, the anchor system will be pulled on the back deck with retrieval on the non-anchor side first, then the anchor side, and all the way to the anchor.

Over this period, the anchor winch and thrusters will used to pull to unseat and retrieve anchors from the seafloor. Depending on water depth and anchors depth, this typically takes 15–20 minutes per anchor. Thruster usage while maintaining station using Dynamic Positioning (DP) will vary depending on weather and sea conditions. Thruster percentages are automatically increased and decreased based on the sea state and weather. If weather conditions are poor, the thrusters will need to work harder to maintain position. Anchors at Burger A and Kakapo locations are wet stored (they were not seated deeply in place) and will not require unseating.

It has been reported that during anchor handling, noises from operating vessels' dynamic positioning thrusters, coupled with other machinery noises generated from anchor deployments and retrieving using winch and steel cables, were the loudest among all activities in the Arctic (LGL, et al. 2014). Although noise levels from anchor handling operations are not expected to cause hearing impairments or injury to marine mammals, these noise levels are high enough to cause behavioral harassment to marine mammals in the vicinity. These noises sources are non-impulsive, and are considered "continuous" in current NMFS noise analysis.

2. Use of Sonar Equipment

If necessary, Fairweather proposes to use a geo-referenced interferometric sonar or multi-beam sonar with magnetometer to provide accurate imagery of the anchors and associated gear prior to retrieval and after the retrieval to confirm removal of anchor equipment. The device is mounted in a towfish towed by the Norseman II (just below the sea surface, or deep-towed). The sound frequencies used in sonar usually range from 100 to 500 kiloHertz (kHz); higher frequencies yield better resolution but less range. The actual device has not been decided, but the following systems would be representative of what would be used:

- A multi-beam echosounder operates at an rms source level of a maximum of 220 dB re 1 µPa @1m. The multi beam echosounder emits high frequency (240 kHz) energy in a fan-shaped pattern of equidistant or equiangular beam spacing. The beam width of the emitted sound energy in the along-track direction is 1.5 degrees, while the across track beam width is 1.8 degrees. (Teledyne Benthos Geophysical 2008; Konsberg 2014).
- A single-beam echosounder operates at an rms source level of approximately 220 dB re 1 µPa @1m. The transducer selected uses a frequency of 210 kHz. The transducer's beam width is approximately 3 degrees. (Teledyne Benthos Geophysical 2008; Konsberg 2014).
- A dual frequency sonar system will operate at about 400 kHz and 900 kHz. The rms source level is 215 dB re 1µPa @1m. The sound energy is emitted in a narrow fan-shaped pattern, with a horizontal beam width of 0.45 degrees for 400 kHz and 0.25 degrees at 900 kHz, with a vertical beam width of 50 degrees. (Teledyne Benthos Geophysical 2008; Konsberg 2014).

In the 2013 Shell 90-day report (Bisson et al., 2013), JASCO measured all the various sources associated with the seismic survey program, including sonar. They measured the distance to the 160 dB threshold to be 130 m, resulting in an ensonified area of 0.053 km^2. More importantly, available evidence suggests that marine mammals do not hear at frequencies above 180–200 kHz, and therefore we do not believe that take is likely to result from exposure to these sources.

3. Ice Forecasting and Ice Management

The anchor retrieval program is located in an area characterized by active sea ice movement, ice scouring, and storm surges. In anticipation of potential ice hazards that may be encountered, we will utilize real-time ice and weather forecasting to identify conditions that could put operations at risk, allowing the vessels to modify their activities accordingly. These observations will be made by experienced ice and weather specialists whose sole duty is to provide information and provide advice on any ice-related threats. These observers and advisors will be based in Anchorage. This real-time ice and weather forecasting will be available to personnel for planning purposes and as a tool to alert the fleet of impending hazardous ice and weather conditions. Potential data sources for ice forecasting and tracking include:

- Potential unmanned aerial support operated by Tulugaq II LLC from vessels for ice scouting.
- Radarsat Data Synthetic Aperture Radar—provides all-weather imagery of ice conditions with very high resolution.
- Moderate Resolution Imaging Spectroradiometer (MODIS)—a satellite providing lower resolution visual and near infrared imagery.
- Other publically available remote sensing satellite data such as Visible Infrared Imaging Radiometer Suite, Oceansat-2 Scatterometer, and Advanced Very High Resolution Radiometer.
- Reports from Ice Specialists on the ice management vessel and anchor handler and from the Ice Observer on the vessels.
- Information from the NOAA ice centers and potentially the University of Colorado.

The proposed 2016 anchor handling fleet will consist of two ice-classed vessels. The only time ice management is likely for this project is around Point Barrow. The goal of the project is to transit into the Beaufort Sea as soon as ice conditions allow, which is typically in late July. If vessels transit into the area and ice moves in, they may be required to manage ice floes. Fairweather does not anticipate active ice management except for a few days near Point Barrow during the transit. Therefore, we have analyzed potential impacts of ice management for two days in the Barrow area.

Description of Marine Mammals in the Area of the Specified Activity

The Chukchi and Beaufort Seas support a diverse assemblage of marine mammals. Table 2 lists the 12 marine mammal species under NMFS jurisdiction with confirmed or possible occurrence in the proposed project area.

TABLE 2—MARINE MAMMAL SPECIES WITH CONFIRMED OR POSSIBLE OCCURRENCE IN THE PROPOSED ACTION AREA

Species/stocks	Conservation status	Habitat	Population estimate
Beluga whale (*Delphinapterus leucas*)—Eastern Chukchi Stock	ESA—Not Listed	Offshore, coastal, ice edges	3,710
Beluga whale (*Delphinapterus leucas*)—Beaufort Stock	ESA—Not Listed	Offshore, coastal, ice edges	32,453
Killer whale (*Orcinus orca*)	ESA—Not Listed	Widely distributed	2,084
Harbor porpoise (*Phocoena phocoena*)—Bering Sea Stock	ESA—Not Listed	Coastal, inland waters, shallow offshore waters.	48,215
Bowhead whale (*Balaena mysticetus*)—Western Arctic Stock	ESA—Endangered	Pack ice, coastal	13,796
Gray whale (*Eschrichtius robustus*)—Eastern Pacific Stock	ESA—Not Listed	Coastal, lagoons, shallow offshore waters.	19,126
Minke whale (*Balaenoptera acutorostrata*)	ESA—Not Listed	Shelf, coastal	810
Humpback whale (*Megaptera novaeangliae*)—Western North Pacific Stock.	ESA—Endangered	Shelf slope, mostly pelagic	6,000–14,000
Fin whale (*Balaenoptera physalus*)—Northeast Pacific Stock	ESA—Endangered	Shelf, coastal	1,368
Bearded seal (*Erignathus barbatus*)	ESA—Not listed	Pack ice, shallow offshore waters.	155,000
Spotted seal (*Phoca largha*)	ESA—(Arctic DPS Not Listed).	Pack ice, coastal haul outs, offshore.	391,000
Ringed seal (*Pusa hispida*)	ESA—Not listed	Land-fast & pack ice, offshore	300,000
Ribbon seal (*Histriophoca fasciata*)	ESA—Not Listed	Pack ice, offshore	90,000–100,000

Among these species, bowhead, humpback, and fin whales are listed as endangered or threatened species under the Endangered Species Act (ESA). In addition, walrus and the polar bear could also occur in the U.S. Chukchi and Beaufort seas; however, these species are managed by the U.S. Fish and Wildlife Service (USFWS) and are not considered in this Notice of Proposed IHA.

Of all these species, bowhead and beluga whales and ringed, bearded, and spotted seals are the species most frequently sighted in the proposed activity area. The proposed action area in Chukchi and Beaufort seas also include areas that have been identified as important for bowhead whale reproduction during summer and fall and for beluga whale feeding and reproduction in summer.

Most spring-migrating bowhead whales would likely pass through the Chukchi Sea prior to the start of the planned anchor handling activities. However, a few whales that may remain in the Chukchi Sea during the summer could be encountered during the anchor handling activities or by transiting vessels. More encounters with bowhead whales would be likely to occur during the westward fall migration in late September through October. Most bowheads migrating in September and October appear to transit across the northern portion of the Chukchi Sea to the Chukotka coast before heading south toward the Bering Sea (Quakenbush et al. 2009). Some of these whales have traveled well north of the planned operations, but others have passed near to, or through, the proposed project area.

Two stocks of beluga whales occur in the proposed anchor retrieving project areas: The Eastern Chukchi stock and the Beaufort Sea stock. The Eastern Chukchi Sea belugas move into coastal areas, including Kasegaluk Lagoon, in late June and animals are sighted in the area until about mid-July (Frost et al. 1993). This movement indicated some overlap in distribution with the Beaufort Sea beluga whale stock during late summer. Summer densities of beluga whales in offshore waters are expected to be low, with somewhat higher densities in ice-margin and nearshore areas. If belugas are present during the summer, they are more likely to occur in or near the ice edge or close to shore during their northward migration. In the fall, beluga whale densities offshore in the Chukchi Sea are expected to be somewhat higher than in the summer because individuals of the eastern Chukchi Sea stock and the Beaufort Sea stock will be migrating south to their wintering grounds in the Bering Sea (Allen and Angliss 2014).

Ringed seals are year-round residents in the Bering Sea, Norton and Kotzebue Sounds, and throughout the Chukchi and Beaufort Seas and are the most frequently encountered seal in the area (Allen and Angliss 2015). They occur as far south as Bristol Bay in years of extensive ice coverage but generally are not abundant south of Norton Sound except in nearshore areas (Frost 1985). Ringed seals will likely be the most abundant marine mammal species encountered in the Chukchi Sea during anchor retrieval operations.

During spring when pupping, breeding, and molting occur, spotted seals are found along the southern edge of the sea ice in the Okhotsk and Bering seas (Quakenbush 1988; Rugh et al. 1997). In late April and early May, adult spotted seals are often seen on the ice in female-pup or male-female pairs, or in male-female-pup triads. Sub-adults may be seen in larger groups of up to 200 animals. During the summer, spotted seals are found primarily in the Bering and Chukchi seas, but some range into the Beaufort Sea (Rugh et al. 1997; Lowry et al. 1998) from July until September. Spotted seals are expected to occur near the planned anchor handling activities in the Chukchi Sea, but they will likely be fewer in number than ringed seals.

Bearded seals occur over the continental shelves of the Bering, Chukchi, and Beaufort seas (Burns 1981b). During the summer period, bearded seals occur mainly in relatively shallow areas because they are predominantly benthic feeders (Burns 1981b). During winter, most bearded seals in Alaskan waters are found in the Bering Sea. From mid-April to June as the ice recedes, some of the bearded seals that overwinter in the Bering Sea migrate northward through the Bering Strait. During the summer they are found near the widely fragmented margin of sea ice covering the continental shelf of the Chukchi Sea and in nearshore areas of the central and western Beaufort Sea (Allen and Angliss 2015). Bearded seals are likely to be encountered during anchor handling activities, and greater numbers of bearded seals are likely to be encountered if the ice edge occurs nearby.

Further information on the biology and local distribution of these species can be found in Fairweather's application (see **ADDRESSES**) and the NMFS Marine Mammal Stock Assessment Reports, which are available online at: *http://www.nmfs.noaa.gov/pr/sars/species.html.*

Potential Effects of the Specified Activity on Marine Mammals

This section includes a summary and discussion of the ways that the types of stressors associated with the specified activity (*e.g.*, operation of dynamic positioning thrusters) have been observed to or are thought to impact marine mammals. The discussion may also include reactions that we consider to rise to the level of a take and those that we do not consider to rise to the level of a take (for example, with acoustics, we may include a discussion of studies that showed animals not reacting at all to sound or exhibiting barely measurable avoidance). This section is intended as a background of potential effects and does not consider either the specific manner in which this activity will be carried out or the mitigation that will be implemented or how either of those will shape the anticipated impacts from this specific activity. The "Estimated Take by Incidental Harassment" section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The "Negligible Impact Analysis" section will include the analysis of how this specific activity will impact marine mammals and will consider the content of this section, the "Estimated Take by Incidental Harassment" section, the "Proposed Mitigation" section, and the "Anticipated Effects on Marine Mammal Habitat" section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms have been derived using auditory evoked potentials, anatomical modeling, and other data. Southall *et al.* (2007) designate "functional hearing groups" for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low frequency cetaceans (13 species of mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 25 kHz;
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High frequency cetaceans (eight species of true porpoises, six species of river dolphins, *Kogia*, the franciscana, and four species of cephalorhynchids): Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz;
- Phocid pinnipeds (true seals): Functional hearing is estimated between 75 Hz to 100 kHz; and
- Otariid pinnipeds (sea lions and fur seals): Functional hearing is estimated between 100 Hz to 48 kHz.

Species found in the vicinity of Fairweather anchor retrieval operation area include four low-frequency cetacean species (Bowhead whale, gray whale, humpback whale, and fin whale), two mid-frequency cetacean species (beluga whale and killer whale), one high-frequency cetacean species (harbor porpoise), and four pinniped species (ringed seal, spotted seal, bearded seal, and ribbon seal).

The proposed Fairweather anchor retrieving operation could adversely affect marine mammal species and stocks by exposing them to elevated noise levels in the vicinity of the activity area. Noise sources that could potentially cause harassment include anchor retrieving activity and limited ice management.

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran et al., 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is the initial threshold shift. If the threshold shift eventually returns to zero (*i.e.,* the threshold returns to the pre-exposure value), it is a temporary threshold shift (Southall et al., 2007).

Threshold Shift (noise-induced loss of hearing)—When animals exhibit reduced hearing sensitivity (*i.e.,* sounds must be louder for an animal to detect them) following exposure to an intense sound or sound for long duration, it is referred to as a noise-induced threshold shift (TS). An animal can experience temporary threshold shift (TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (*i.e.,* there is complete recovery), can occur in specific frequency ranges (*i.e.,* an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced initially by only 6 dB or reduced by 30 dB). PTS is permanent, but some recovery is possible. PTS can also occur in a specific frequency range and amount as mentioned above for TTS.

The following physiological mechanisms are thought to play a role in inducing auditory TS: Effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output (Southall et al., 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all can affect the amount of associated TS and the frequency range in which it occurs. As amplitude and duration of sound exposure increase, so, generally, does the amount of TS, along with the recovery time. For intermittent sounds, less TS could occur than compared to a continuous exposure with the same energy (some recovery could occur between intermittent exposures depending on the duty cycle between sounds) (Kryter et al., 1966; Ward, 1997). For example, one short but loud (higher SPL) sound exposure may induce the same impairment as one longer but softer sound, which in turn may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, prolonged exposure to sounds strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985). Although in the case of Fairweather's anchor retrieving program, NMFS does not expect that animals would experience levels high enough or durations long enough to result in TS given that the noise levels from the operation is a very low.

For marine mammals, published data are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran et al., 2000, 2002, 2003, 2005, 2007, 2010a, 2010b; Finneran and Schlundt, 2010; Lucke et al., 2009; Mooney et al., 2009a, 2009b; Popov et al., 2011a, 2011b; Kastelein et al., 2012a; Schlundt et al., 2000; Nachtigall et al., 2003, 2004). For pinnipeds in water, data are limited to measurements of TTS in harbor seals, an elephant seal, and California sea lions (Kastak et al., 1999, 2005; Kastelein et al., 2012b).

Lucke et al. (2009) found a threshold shift (TS) of a harbor porpoise after exposing it to airgun noise with a received sound pressure level (SPL) at 200.2 dB (peak-to-peak) re: 1 μPa, which corresponds to a sound exposure level of 164.5 dB re: 1 μPa^2 s after integrating exposure. NMFS currently uses the root-mean-square (rms) of received SPL at 180 dB and 190 dB re: 1 μPa as the threshold above which permanent threshold shift (PTS) could occur for cetaceans and pinnipeds, respectively. Because the airgun noise is a broadband impulse, one cannot directly determine the equivalent of rms SPL from the reported peak-to-peak SPLs. However, applying a conservative conversion factor of 16 dB for broadband signals from seismic surveys (McCauley, et al., 2000) to correct for the difference between peak-to-peak levels reported in Lucke et al. (2009) and rms SPLs, the rms SPL for TTS would be approximately 184 dB re: 1 μPa, and the received levels associated with PTS (Level A harassment) would be higher. This is still above NMFS' current 180 dB rms re: 1 μPa threshold for injury. However, NMFS recognizes that TTS of harbor porpoises is lower than other cetacean species empirically tested (Finneran & Schlundt, 2010; Finneran et al., 2002; Kastelein and Jennings, 2012).

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall et al., 2007), so one can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions (Clark et al. 2009). Acoustic masking is when other noises such as from human sources interfere with animal detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Under certain circumstances, masking of important acoustic cues for marine mammals could inhibit their ability to maximize feeding or breeding opportunities, potentially effecting important vital rates that could translate to effects on survival and reproduction.

Masking occurs at the frequency band which the animals utilize. Therefore, since noise generated from vessels dynamic positioning activity is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by odontocetes (toothed whales). However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (*e.g.,* Clark et al. 2009) and cause increased stress levels (*e.g.,* Foote et al. 2004; Holt et al. 2009).

Unlike TS, masking, which can occur over large temporal and spatial scales, can potentially affect the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than 3 times in terms of sound pressure level (SPL)) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand 2009). All anthropogenic noise sources, such as those from vessel traffic and anchor retrieving contribute to the elevated ambient noise levels, thus increasing potential for or severity of masking.

Finally, exposure of marine mammals to certain sounds could lead to behavioral disturbance (Richardson et al. 1995), such as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (*e.g.*, pinnipeds flushing into water from haulouts or rookeries).

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall et al. 2007). Currently NMFS uses a received level of 160 dB re 1 μPa (rms) to predict the onset of behavioral harassment from impulse noises (such as impact pile driving), and 120 dB re 1 μPa (rms) for continuous noises (such as operating DP thrusters). No impulse noise is expected from the Fairweather's anchor retrieval operation. For the Fairweather's anchor retrieval operation, the 120 dB re 1 μPa (rms) threshold is considered because only continuous noise sources would be generated.

The biological significance of many of these behavioral disturbances is difficult to predict. However, the consequences of behavioral modification could be biologically significant if the change affects growth, survival, and/or reproduction, which depends on the severity, duration, and context of the effects.

Anticipated Effects on Marine Mammal Habitat

Project activities that could potentially impact marine mammal habitats by causing acoustical injury to prey resources and disturbing benthic habitat from anchor retrieving. Regarding the former, however, acoustical injury from thruster noise is unlikely. Previous noise studies (*e.g.*, Greenlaw et al. 1988, Davis et al. 1998, Christian et al. 2004) with cod, crab, and schooling fish found little or no injury to adults, larvae, or eggs when exposed to impulsive noises exceeding 220 dB. Continuous noise levels from ship thrusters are generally below 180 dB, and do not create great enough pressures to cause tissue or organ injury. However, the elevated noise levels could cause temporary habitat abandoning by prey species.

Retrieving of the anchors will result in some seafloor disturbance and temporary increases in water column turbidity. Previous drilling units were held in place during operations with systems of six-eight anchors for each unit. The embedment type anchors were designed to embed into the seafloor thereby providing the required resistance. The anchors generally penetrated the seafloor on contact. Both the anchor and anchor chain will disturb sediments during the retrieval process, creating a trench or depression with surrounding berms where the displaced sediment is mounded. Some sediment will be suspended in the water column during the removal of the anchors. The depression with associated berm, collectively known as an anchor scar, remains when the anchor is removed. Shell estimated that each anchor would impact a seafloor area of up to about 233 m^2 (2,510 ft^2). We assume the retrieval process will result in disturbance of this area, but the anchors will be removed and the area will most likely be recolonized.

Over time the anchor scars will be filled due to natural movement of sediment. The duration of the scars depends upon the energy of the system, water depth, ice scour, and sediment type. Anchor scars were visible under low energy conditions in the North Sea for five to ten years after retrieval. Scars typically do not form or persist in sandy mud or sand sediments but may last for nine years in hard clays (Centaur Associates, Inc. 1984). The energy regime, plus possible effects of ice gouge in the Arctic Ocean, suggests that anchor scars will be refilled faster than in the North Sea.

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant). NMFS implementing regulations at 50 CFR 216.104(a)(11) require incidental take applications to include information about the availability and feasibility of equipment, methods, and manner of conducting the activity and other means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, and on their availability for subsistence uses.

For the proposed Fairweather open-water anchor retrieval operations in the Chukchi and Beaufort seas, Fairweather and its contractor worked with NMFS to propose the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity as a result of the activities. The primary purpose of these mitigation measures is to detect marine mammals and avoid vessel interactions during the anchor retrieval operation. The following are mitigation measures proposed to be included in the IHA (if issued).

(a) Establishing and Monitoring Exclusion Zone for Anchor Retrieval and Ice Management

(1) Protected species observers (PSOs) would establish and monitor a safety zone of 500 m for anchor retrieval activity and ice management. The modeled safety zone for anchor retrieval is 220 m from the source.

(2) When the vessel is positioned on-site, the PSOs will 'clear' the area by observing the 500 m safety zone for 30 minutes; if no marine mammals are observed within those 30 minutes, anchor retrieval or ice management will commence.

(3) If a marine mammal(s) is observed within the 500 m of the anchor retrieval and/or ice management safety zone during the clearing, the PSOs will continue to watch until the animal(s) is gone and has not returned for 15 minutes if the sighting was a pinniped, or 30 minutes if it was a cetacean.

(4) Once the PSOs have cleared the area, anchor retrieval or ice management operations may commence.

(5) Should a marine mammal(s) be observed within or approaching the 500-m safety zone during the retrieval or ice management operations, the PSOs will monitor and carefully record any reactions observed.

(b) Establishing and Monitoring Exclusion Zone for Sonar Activity

Although NMFS does not expect marine mammals would be taken by high-frequency sonar used for locating anchors, Fairweather requests that the following mitigation and monitoring measures related to sonar operations be implemented

(1) PSOs would establish and monitor an exclusion zone of 500 m for sonar activity. The modeled exclusion zone for sonar activity is 220 m from the source.

(2) Prior to starting the sonar activity, the PSOs will 'clear' the area by observing the 500 m exclusion zone for 30 minutes; if no marine mammals are observed within those 30 minutes, sonar activity will commence.

(3) If a marine mammal(s) is observed within the 500-m exclusion zone during the clearing, the PSOs will continue to watch until the animal(s) is gone and has not returned for 15 minutes if the sighting was a pinniped, or 30 minutes if it was a cetacean.

(4) Once the PSOs have cleared the area, sonar activity may commence.

(c) Establishing Zones of Influence (ZOIs)

PSOs would establish and monitor ZOIs where the received level is 120 dB during Fairweather's anchor retrieval operation and where the received level is 160 dB during sonar activity.

(d) Vessel Speed or Course Measures

If a marine mammal is detected outside the 500 m sonar exclusion zone for sonar activities or during transit between sites, based on its position and the relative motion, is likely to enter those zones, the vessel's speed and/or direct course may, when practical and safe, be changed. The marine mammal activities and movements relative to the vessels shall be closely monitored to ensure that the marine mammal does not approach within either zone. If the mammal appears likely to enter the respective zone, further mitigation actions will be taken, *i.e.*, either further course alterations or shut down in the case of the sonar. During actual anchor handling, the vessel is stationary on site.

In addition, the vessel shall reduce its speed to 5 kt (9.26 km/h) or lower when within 900 ft (274 m) of cetaceans or pinnipeds. Further, Fairweather shall avoid transits within designated North Pacific right whale critical habitat. If transit within North Pacific right whale critical habitat cannot be avoided, vessel operators are requested to exercise extreme caution and observe the of 10 kt (18.52 km/h) vessel speed restriction while within North Pacific right whale critical habitat. Within the North Pacific right whale critical habitat, all vessels shall keep 2,625 ft (800 m) away from any observed North Pacific right whales and avoid approaching whales head-on consistent with vessel safety.

(e) Shutdown Measures

If an animal enters or is approaching the 500 m exclusion zone, sonar will be shut down immediately. Sonar activity will not resume until the marine mammal has cleared the exclusion zone. PSOs will also collect behavioral information on marine mammals beyond the exclusion zone.

Mitigation Conclusions

NMFS has carefully evaluated Fairweather's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measures are expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).
2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing the severity of harassment takes only).
5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.
6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the applicant's proposed measures, as well as other measures. considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance. Proposed measures to ensure availability of such species or stock for taking for certain subsistence uses are discussed later in this document (see "Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses" section).

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Fairweather submitted a marine mammal monitoring plan as part of the IHA application. The plan may be modified or supplemented based on comments or new information received from the public during the public comment period or from the peer review panel (see the "*Monitoring Plan Peer Review*" section later in this document).

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in our understanding of the likely occurrence of marine mammal species in the vicinity of the action, *i.e.*, presence, abundance, distribution, and/or density of species.

2. An increase in our understanding of the nature, scope, or context of the likely exposure of marine mammal species to any of the potential stressor(s) associated with the action (*e.g.* sound or visual stimuli), through better understanding of one or more of the following: The action itself and its environment (*e.g.* sound source characterization, propagation, and ambient noise levels); the affected species (*e.g.* life history or dive pattern); the likely co-occurrence of marine mammal species with the action (in whole or part) associated with specific adverse effects; and/or the likely biological or behavioral context of exposure to the stressor for the marine mammal (*e.g.* age class of exposed animals or known pupping, calving or feeding areas).

3. An increase in our understanding of how individual marine mammals respond (behaviorally or physiologically) to the specific stressors associated with the action (in specific contexts, where possible, *e.g.,* at what distance or received level).

4. An increase in our understanding of how anticipated individual responses, to individual stressors or anticipated combinations of stressors, may impact either: The long-term fitness and survival of an individual; or the population, species, or stock (*e.g.* through effects on annual rates of recruitment or survival).

5. An increase in our understanding of how the activity affects marine mammal habitat, such as through effects on prey sources or acoustic habitat (*e.g.,* through characterization of longer-term contributions of multiple sound sources to rising ambient noise levels and assessment of the potential chronic effects on marine mammals).

6. An increase in understanding of the impacts of the activity on marine mammals in combination with the impacts of other anthropogenic activities or natural factors occurring in the region.

7. An increase in our understanding of the effectiveness of mitigation and monitoring measures.

8. An increase in the probability of detecting marine mammals (through improved technology or methodology), both specifically within the safety zone (thus allowing for more effective implementation of the mitigation) and in general, to better achieve the above goals.

Proposed Monitoring Measures

Monitoring will provide information on the numbers of marine mammals potentially affected by the anchor retrieval operation and facilitate real-time mitigation to prevent injury of marine mammals by vessel traffic. These goals will be accomplished in the Chukchi and Beaufort seas during 2016 by conducting vessel-based monitoring to document marine mammal presence and distribution in the vicinity of the operation area.

Visual monitoring by Protected Species Observers (PSOs) during anchor retrieval operation, and periods when the operation is not occurring, will provide information on the numbers of marine mammals potentially affected by the activity. Vessel-based PSOs onboard the vessels will record the numbers and species of marine mammals observed in the area and any observable reaction of marine mammals to the anchor retrieval operation in the Chukchi and Beaufort seas.

Visual-Based PSOs

Vessel-based monitoring for marine mammals would be done by trained protected species observers (PSOs) throughout the period of anchor retrieval operation. The observers would monitor the occurrence of marine mammals onboard vessels during all daylight periods during operation. PSO duties would include watching for and identifying marine mammals; recording their numbers, distances, and reactions to the survey operations; and documenting "take by harassment."

A sufficient number of PSOs would be required onboard each survey vessel to meet the following criteria:

- 100% monitoring coverage during all periods of anchor retrieval operations in daylight;
- Maximum of 4 consecutive hours on watch per PSO; and
- Maximum of 12 hours of watch time per day per PSO.

PSO teams will consist of Inupiat observers and experienced field biologists. Each vessel will have an experienced field crew leader to supervise the PSO team. The total number of PSOs may decrease later in the season as the duration of daylight decreases.

(1) PSOs Qualification and Training

Lead PSOs and most PSOs would be individuals with experience as observers during marine mammal monitoring projects in Alaska or other offshore areas in recent years. New or inexperienced PSOs would be paired with an experienced PSO or experienced field biologist so that the quality of marine mammal observations and data recording is kept consistent.

Resumes for candidate PSOs would be provided to NMFS for review and acceptance of their qualifications. Inupiat observers would be experienced in the region and familiar with the marine mammals of the area. All observers would complete a NMFS-approved observer training course designed to familiarize individuals with monitoring and data collection procedures.

(2) Specialized Field Equipment

The PSOs shall be provided with Fujinon 7 X 50 or equivalent binoculars for visual based monitoring onboard all vessels.

Laser range finders (Leica LRF 1200 laser rangefinder or equivalent) would be available to assist with distance estimation.

Marine Mammal Behavioral Response to Vessel Disturbance Study

As part of the Chukchi Sea Environmental Studies Program (CSESP), marine mammal biologists collected behavioral response data on walruses and seals to the vessel. The objectives of the observer on the CSESP program were to collect information on marine mammal distribution and density estimates using standard line-transect theory; in other words, the program was not a mitigation program for any particular seismic activity. Because the vessels in this program will be transiting a large portion of the time, Fairweather proposes to utilize this opportunity to collect information on responses of marine mammals, particularly walruses and seals, to vessel disturbance.

As part of the standard Fairweather's observation protocol, observers will record the initial and subsequent behaviors of marine mammals, a methodology they refer to as 'focal following'. Marine mammals will be monitored and observed until they disappear from the PSO's view (PSOs may have to follow the marine mammals by moving to new locations in order to keep the marine mammals in constant view). Observers will also record any perceived reactions that marine mammals may have in response to the vessel. When following the animal observers will use either a notebook or voice recorder to note any changes in behavior and the time when these changes occur. Time of first observation, time of changes in behavior, and time last seen will be recorded. Behaviors and changes in behaviors of marine mammals will be recorded as long as they are in view of the boat. After the animal is out of sight, PSOs will summarize the observation in the notes field of the electronic data collection platform. It may be difficult to find the animal being followed after it dives and if this happens, PSO will stop focal follow observation.

For groups of marine that are too large to monitor each animal one or more focal animals, *e.g.,* cow/calf pair, subadult female, adult male, etc., will be chosen to monitor until no longer observable. For a sighting with more than one animal, the most common behavior of the group will be recorded. Focal animals will be chosen without bias in relation to age and sex, but as observations accumulate and specific age/sex categories are underrepresented, focal animals may be chosen from those underrepresented categories if possible.

A separate section in the 90-day report (see below) will be provided with a summary of results of vessel disturbance, with the ultimate goal of a peer-reviewed publication.

Monitoring Plan Peer Review

The MMPA requires that monitoring plans be independently peer reviewed "where the proposed activity may affect the availability of a species or stock for taking for subsistence uses" (16 U.S.C. 1371(a)(5)(D)(ii)(III)). Regarding this requirement, NMFS' implementing regulations state, "Upon receipt of a complete monitoring plan, and at its discretion, [NMFS] will either submit the plan to members of a peer review panel for review or within 60 days of receipt of the proposed monitoring plan, schedule a workshop to review the plan" (50 CFR 216.108(d)).

NMFS has established an independent peer review panel to review Fairweather's 4MP for the proposed anchor retrieval operation in the Chukchi and Beaufort seas. The panel met via web conference in early March 2016, and provided comments to NMFS in mid-April 2016. NMFS is currently working with Fairweather on recommendations made by the panel, and will incorporate appropriate changes into the monitoring requirements of the IHA (if issued).

Reporting Measures

(1) Monitoring Reports

The results of Fairweather's anchor retrieval program monitoring reports would be presented in weekly, monthly, and 90-day reports, as required by NMFS under the proposed IHA. The initial final reports are due to NMFS within 90 days after the expiration of the IHA (if issued). The reports will include:

- Summaries of monitoring effort (*e.g.,* total hours, total distances, and marine mammal distribution through the study period, accounting for sea state and other factors affecting visibility and detectability of marine mammals);
- Summaries that represent an initial level of interpretation of the efficacy, measurements, and observations, rather than raw data, fully processed analyses, or a summary of operations and important observations;
- Information on distances marine mammals are sighted from operations and the associated noise isopleth for active sound sources (*i.e.,* anchor retrieval, ice management, side scan sonar);
- Analyses of the effects of various factors influencing detectability of marine mammals (*e.g.,* sea state, number of observers, and fog/glare);
- Species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover;
- Estimates of uncertainty in all take estimates, with uncertainty expressed by the presentation of confidence limits, a minimum-maximum, posterior probability distribution, or another applicable method, with the exact approach to be selected based on the sampling method and data available;
- A clear comparison of authorized takes and the level of actual estimated takes; and

The "90-day" reports will be subject to review and comment by NMFS. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS.

(2) Notification of Injured or Dead Marine Mammals

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA, such as a serious injury, or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), Fairweather would immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinators. The report would include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with Fairweather to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Fairweather would not be able to resume its activities until notified by NMFS via letter, email, or telephone.

In the event that Fairweather discovers a dead marine mammal, and the lead PSO determines that the cause of the death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), Fairweather would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinators. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with Fairweather to determine whether modifications in the activities are appropriate.

In the event that Fairweather discovers a dead marine mammal, and the lead PSO determines that the death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Fairweather would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinators, within 24 hours of the discovery. Fairweather would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Fairweather can continue its operations under such a case.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Takes by Level B harassments of some species are anticipated as a result of Fairweather's proposed anchor retrieval operation. NMFS expects marine mammal takes could result from noise propagation from anchor retrieving activities, which includes the operation of dynamic thrusters and other machinery noises generated from anchor retrieving using winch and steel cables. NMFS does not expect marine mammals would be taken by collision with vessels, because the vessels will be moving at low speeds, and PSOs on the vessels will be monitoring for marine mammals and will be able to alert the vessels to avoid any marine mammals in the area.

For non-impulse sounds, such as those produced by the dynamic positioning thrusters and anchor handling during Fairweather's anchor retrieval operation, NMFS uses the 180 and 190 dB (rms) re 1 µPa isopleth to indicate the onset of Level A harassment for cetaceans and pinnipeds, respectively; and the 120 dB (rms) re 1 µPa isopleth for Level B harassment of all marine mammals.

The estimates of the numbers of each species of marine mammal that could potentially be exposed to sound associated with the anchor retrieval activity are calculated by multiplying the area of ensonified areas by animal densities. Specifically, the ensonified area for anchor retrieving activities is the area where received noise levels are above 120 dB, during the periods when these activities would be occurring. For the 2015 IHA application for Shell's exploration drilling in the Chukchi Sea (Shell 2015), JASCO modeled the anchor handling activity using their estimated distance to 120 dB isopleths at 14,000 m (JASCO 2013). This yields an estimated 120 dB ensonified area of 615 km^2.

The duration of sound-producing activity was calculated for each site. Although each anchor site has different configurations and numbers of anchors, Fairweather assumes it would take up to seven days per site to remove all anchors. Because the vessels will not be operating at full power during the entire time, Fairweather assumes half of the time (3.5 days) will be exceeding 120 dB. With five (5) anchor sites, this results in 17.5 days of anchor handling activity that may result in disturbance.

Description of the Sound Sources

Anchor Retrieving: During Shell's 2012 exploratory program in the Beaufort and Chukchi seas, sound source verifications (SSVs) were conducted of all activities conducted near both Burger and Sivulliq during the open water season (LGL et al. 2014). Detailed descriptions of the sound measurements and analysis methods can be found in Chapter 3 of the Shell 2012 90-day report to NMFS (Austin et al. 2013). Anchor handling activities were measured at 143 dB at 860 m, the loudest activity was when "seating" the anchors (LGL et al. 2014). It is assumed that the unseating of anchors will be similar in power needed from the vessel, so this source is suitable to estimate area ensonified. In the report, JASCO extrapolated the distance to the 120 dB threshold using a simple spreading loss of 20 log R, resulting in a radius of 12,000 m. This radius was used to estimate the area ensonified for this application.

Each anchor site has different configurations and numbers of anchors, but Fairweather assume it will take up to seven (7) days per site to remove all anchors. Because the vessels will not be operating at full power during the entire time, Fairweather assumed half of the time (3.5 days) will be utilizing the high power to unseat anchors. With five (5) anchor sites, this results in 17.5 days of anchor handling activity that may result in disturbance.

Ice Management: Although highly unlikely, it may be necessary for ice management near Point Barrow while transiting to the Sivulliq site. During exploration drilling operations on the Burger Prospect in 2012, encroachment of sea ice required the Discoverer to temporarily depart the drill site. While it was standing by to the south, ice management vessels remained at the drill site to protect buoys that were attached to the anchors. Sounds produced by vessels managing the ice were recorded and the distance to the 120 dB re 1 µPa rms threshold was calculated to occur at 9.6 km (JASCO et al. 2014). The total calculated ensonified area would be 290 km^2.

Fairweather assumes that it could take place over a two (2) day period near Point Barrow.

Estimates of Marine Mammal Densities

The densities of marine mammals per species were calculated using 2009–2014 Aerial Surveys of Arctic Marine Mammals (ASAMM) data (*http://www.afsc.noaa.gov/nmml/cetacean/bwasp/index.php*) for bowhead, beluga, and gray whales in the Beaufort and Chukchi Seas and the Shell 2015 IHA application (Shell 2015) for all other species. The ASAMM density data are separated by depth, month, year, and location. The maximum calculated density with the depth strata in which the anchor system is located, the month (based on project activity timing), year (maximum of 2009–2014), and location (Chukchi vs. Beaufort) was used. For example, anchor handling only occurs in the summer, so density data from July and August were used; side scan sonar may occur at the beginning and end of the project, so density data were separated into summer and fall. The Shell 2015 IHA included average and maximum density estimates for area, month, and location. The maximum calculated density was used in take estimates for these other species, regardless of area, month, or location.

Bowhead Whale

The bowhead whale density estimate is separated into the Chukchi Sea and Beaufort Seas based on the ASAMM study areas for aerial data collected 2008–2014. For each depth stratum, the maximum density estimate was used for summer and fall (Table 3). The bowhead whale densities in the Chukchi Sea range up to 0.0145 whales/km^2 in the summer and up to 0.1813 whales/km^2 in the fall, with the highest density for both seasons in the 50–200 m north region. The bowhead whale densities in the Beaufort Sea range up to 0.2883 whales/km^2 in the summer and up to 0.1310 whales/km^2 in the fall, both in the east 21–50 m region.

Beluga Whale

The beluga whale density estimate is separated into the Chukchi Sea and Beaufort Seas based on the ASAMM study areas for aerial data collected 2008–2014. For each depth stratum, the maximum density estimate was used for summer and fall (Table 3). The beluga whale densities in the Chukchi Sea range up to 0.1633 whales/km^2 in the summer in the 0–35 m north region and up to 0.0495 whales/km^2 in the fall in the 50–200 m north region. The beluga whale densities in the Beaufort Sea range up to 0.7924 whales/km^2 in the summer and up to 0.1425 whales/km^2 in the fall, both in the east 51–200 m east region.

Gray Whale

The gray whale density estimate is only in the Chukchi Sea based on the ASAMM study areas for aerial data collected 2008–2014. For each depth stratum, the maximum density estimate was used for summer and fall (Table 3). The gray whale densities in the Chukchi Sea range up to 0.2594 whales/km^2 in the summer and up to 0.1732 whales/km^2 in the fall, with the highest density for both seasons in the 50–200 m south region.

Other Cetaceans

Shell (2015) derived average and maximum density estimates for summer and fall from all available open water research and monitoring data. For the purposes of this project, the maximum of the density estimates were used, regardless of whether the density was for summer or fall (Table 3). The maximum density is 0.0044 whales/km^2 for the harbor porpoise; 0.0004 whales/km^2 for the fin, humpback, and killer whale; and 0.0006 whales/km^2 for the minke whale.

Seals

Shell (2015) derived average and maximum density estimates for summer and fall from all available open water research and monitoring data. For the purposes of this project, the maximum of the density estimates were used, regardless of whether the density was for summer or fall (Table 3). The maximum density is 0.6075 seals/km^2 for the ringed seal; 0.0203 seals/km^2 for the bearded seal; and 0.0122 seals/km^2 for the spotted seal.

TABLE 3—EXPECTED DENSITIES OF WHALES AND SEALS IN AREA OF THE CHUKCHI AND BEAUFORT SEAS

Species	Density (#/km^2)			
	Chukchi Sea		Beaufort Sea	
	Summer	Fall	Summer	Fall
Bowhead whale	0.0145	0.1813	0.2883	0.1310
Beluga whale	0.1633	0.0495	0.7924	0.1425
Gray whale	0.2594	0.1732	NA	NA
Fin whale	0.0004		0	
Humpback whale	0.0004			
Minke whale	0.0006			
Harbor porpoise	0.0044			
Killer whale	0.0004			
Ringed seal	0.6075			
Bearded seal	0.0203			
Spotted seal	0.0122			

Calculation of Exposures

The estimates of the numbers of each marine mammal species that could potentially be exposed to sound associated with the anchor retrieval program, specifically the unseating of anchors, potential side scan sonar survey, and potential ice management, were estimated using multiplying the following three variables: (1) The area (in km^2) of ensonification for disturbance for each activity, (2) the duration (in days) of the sound activity, and (3) the density (# of marine mammals/km^2) as summarized in Table 3. It is important to note that these estimates are based on worst-case (and unlikely) sound levels and duration, and the maximum reported density estimates that do not account for the movement of animals near the anchor site during retrieval activities.

Since the two stocks occur in the Beaufort and Chukchi seas and one cannot distinguish them visually, the pooled densities in different seasons represent the presence of both stocks. The current abundance estimate for the Eastern Chukchi Sea Stock is 3,710 individuals and the abundance estimate for the Beaufort Sea Stock is 39,258 individuals (Allen and Angliss 2014), resulting in a combined total estimate of 42,968 individuals. The Eastern Chukchi Sea Stock is, therefore, considered to represent 8.6% of the combined population and the Beaufort Sea Stock is considered to represent 91.4% of the same. Therefore, the estimated takes of each beluga stock were based on the proportion of these stocks, with 8.6% account for the Eastern Chukchi Sea Stock, and 91.4% account for the Beaufort Sea Stock for both summer and fall.

A summary of the total number of estimated exposures per species, per sea, and per season is provided in Table 4.

TABLE 4—SUMMARY OF NUMBER OF MARINE MAMMALS POTENTIALLY EXPOSED TO LEVEL B HARASSMENT

Species	Chukchi Sea	Beaufort Sea	Abundance	Total	Percent of stock or population
Bowhead whale	37.41	620.51	19,534	658	3.37
Gray whale	197.41	0	20,990	197	0.94
Beluga whale (E. Chukchi stock)	33.55	19.98	3,710	54	1.47
Beluga whale (Beaufort stock)	356.56	212.38	39,258	569	1.45
Fin whale	3.68	0	10,103	4	0.04
Humpback whale	3.68	0.86	1,652	4	0.27
Minke whale	5.52	1.29	1,233	7	0.55
Harbor porpoise	40.46	9.48	48,215	50	0.10
Killer whale	3.68	0.86	2,347	4	0.19
Ringed seal	5,586.67	1,308.58	249,000	6,895	2.77
Bearded seal	186.68	43.73	155,000	230	0.15

TABLE 4—SUMMARY OF NUMBER OF MARINE MAMMALS POTENTIALLY EXPOSED TO LEVEL B HARASSMENT—Continued

Species	Chukchi Sea	Beaufort Sea	Abundance	Total	Percent of stock or population
Spotted seal	112.19	26.28	460,268	138	0.03

The estimated Level B harassment takes as a percentage of the marine mammal stock are less than 3.37% in all cases (Table 4). The highest percent of population estimated to be taken is 3.37% by Level B harassment of the bowhead whale.

Analysis and Preliminary Determinations

Negligible Impact

Negligible impact is "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival" (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, effects on habitat, and the status of the species.

To avoid repetition, this discussion of our analyses generally applies to all the species listed in Table 4, given that the anticipated effects of Fairweather's anchor retrieving operation on marine mammals (taking into account the proposed mitigation) are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are pointed out below.

No injuries or mortalities are anticipated to occur as a result Fairweather's anchor retrieving operation, and none are proposed to be authorized. Additionally, animals in the area are not expected to incur hearing impairment (*i.e.,* TTS or PTS) or non-auditory physiological effects. The takes that are anticipated and authorized are expected to be limited to short-term Level B behavioral harassment in the form of brief startling reaction and/or temporarily vacating the area.

Any effects on marine mammals are generally expected to be restricted to avoidance of a limited area around Fairweather's proposed activities and short-term changes in behavior, falling within the MMPA definition of "Level B harassment." Mitigation measures, such as controlled vessel speed and dedicated marine mammal observers, will ensure that takes are within the level being analyzed. In all cases, the effects are expected to be short-term, with no lasting biological consequence.

Of the 11 marine mammal species likely to occur in the proposed anchor retrieving area, bowhead, humpback, and fin whales are listed as endangered or threatened under the ESA. These species are also designated as "depleted" under the MMPA. None of the other species that may occur in the project area are listed as threatened or endangered under the ESA or designated as depleted under the MMPA.

The project area of the Fairweather's proposed activities is within areas that have been identified as biologically important areas (BIAs) for feeding for the gray and bowhead whales and for reproduction for gray whale during the summer and fall months (Clarke et al. 2015). In addition, the coastal Beaufort Sea also serves as a migratory corridor during bowhead whale spring migration, as well as for their feeding and breeding activities. Additionally, the coastal area of Chukchi and Beaufort seas also serve as BIAs for beluga whales for their feeding and migration. However, the Fairweather's proposed anchor retrieving operation would only occur in 5 locations totaling maximum 10 days. As discussed earlier, the Level B behavioral harassment on marine mammals from the proposed activity is expected to be brief startling reaction and temporary vacating of the area. No long-term biologically significant impacts to marine mammals are expected from the proposed anchor retrieving activity.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from Fairweather's proposed anchor retrieving operation in the Chukchi and Beaufort seas is not expected to adversely affect the affected species or stocks through impacts on annual rates of recruitment or survival, and therefore will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

The requested takes represent less than 3.37% of all populations or stocks potentially impacted (see Table 4 in this document). These take estimates represent the percentage of each species or stock that could be taken by Level B behavioral harassment. The numbers of marine mammals estimated to be taken are small in proportion to the total populations of the affected species or stocks.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, NMFS finds that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

Subsistence hunting is an essential aspect of Iñupiat life, especially in rural coastal villages. The Iñupiat participate in subsistence hunting activities in and around the Chukchi and Beaufort Seas. The animals taken for subsistence provide a significant portion of the food that will last the community through the year. Marine mammals represent on the order of 60–80 percent of the total subsistence harvest. Along with the nourishment necessary for survival, the subsistence activities strengthen bonds within the culture, provide a means for educating the younger generation, provide supplies for artistic expression, and allow for important celebratory events.

The MMPA requires that any harassment not result in an unmitigable adverse impact on the availability of species or stocks for taking (101(a)(5)(D)(i)(II)). Unmitigable adverse impact is defined as (50 CFR 216.103):

- An impact resulting from the specified activity that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by:
- Causing marine mammals to abandon or avoid hunting areas;
- Directly displacing subsistence users; or,
- Placing physical barriers between the marine mammals and the subsistence users; and
- Cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

In the following sub-sections, the major animals used for subsistence by villages of the upper-west and north coast of Alaska are discussed (bowhead whale, beluga whale, and all three common species of seals [ringed, spotted, and bearded seals]).

Bowhead Whale

Anchor handling-related vessel traffic may traverse some areas used during bowhead harvests by Chukchi and Beaufort villages. Bowhead hunts by residents of Wainwright, Point Hope, and Point Lay take place almost exclusively in the spring prior to the date on which the vessels would commence the proposed anchor handling program. From 1984 through 2009, all bowhead harvests by these Chukchi Sea villages occurred only between April 14 and June 24 (George and Tarpley 1986; George et al. 1987, 1988, 1990, 1992, 1995, 1998, 1999, 2000; Philo et al. 1994; Suydam et al. 1995a,b, 1996, 1997, 2001a,b, 2002, 2003, 2004, 2005a,b, 2006, 2007, 2008, 2009, 2010), while vessels will not enter the Bering Sea (northbound) prior to July 1. However, fall whaling by some of these Chukchi Sea villages has occurred since 2010 and is likely to occur in the future, particularly if bowhead quotas are not completely filled during the spring hunt, and fall weather is accommodating. A Wainwright whaling crew harvested the first fall bowhead for these villages in 90 years or more on October 7, 2010, and another in October of 2011 (Suydam et al. 2011, 2012, 2013). No bowhead whales were harvested during fall in 2012, but 3 were harvested by Wainwright in fall 2013.

Barrow crews have traditionally hunted bowheads during both spring and fall; however, spring whaling by Barrow crews is normally finished before the date on which anchor handling operations would commence. From 1984 through 2011 whales were harvested in the spring by Barrow crews only between April 23 and June 15 (George and Tarpley 1986; George et al. 1987, 1988, 1990, 1992, 1995, 1998, 1999, 2000; Philo et al. 1994; Suydam et al. 1995 a, b, 1996, 1997, 2001a, 2002, 2003, 2004, 2005a,b, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013). Fall whaling by Barrow crews does take place during the time period when anchor handling activities would be completed, with vessels out of the Chukchi Sea by the end of August. From 1984 through 2011, whales were harvested in the fall by Barrow crews between August 31 and October 30, indicating that there is potential for vessel traffic to affect these hunts. Most fall whaling by Barrow crews, however, takes place east of Barrow along the Beaufort Sea coast therefore providing little opportunity for the anchor handling program to affect them. For example, Suydam et al. (2008) reported that in the previous 35 years, Barrow whaling crews harvested almost all their whales in the Beaufort Sea to the east of Point Barrow. As all anchor sites are over 100 miles from Barrow, NMFS does not anticipate any conflict with Barrow harvest. In the event the sonar survey for Sivulliq is taking place as Barrow is harvesting, the Norseman II will traverse 50 mi offshore around Barrow.

Nuiqsut and Kaktovik crews traditionally hunt during the fall, harvesting in late August through September. The Alaska Eskimo Whaling Commission (AEWC) requires that all industry activities cease working east of 150° W. by August 25th for the start of whaling for those communities. The anchor handling vessels will enter the Beaufort Sea as soon as ice at Point Barrow allows for safe passage and will complete the Sivulliq anchor retrieval well before August 25th. If a sonar survey is required on this site, it will take place after the completion of the fall hunt and has been cleared by both communities.

Beluga Whales

Beluga whales typically do not represent a large proportion of the subsistence harvests by weight in the communities of Wainwright and Barrow, the nearest communities to the planned anchor handling project area. Barrow residents hunt beluga in the spring (normally after the bowhead hunt) in leads between Point Barrow and Skull Cliffs in the Chukchi Sea, primarily in April–June and later in the summer (July–August) on both sides of the barrier island in Elson Lagoon/Beaufort Sea (Minerals Management Service [MMS] 2008), but harvest rates indicate the hunts are not frequent. Wainwright residents hunt beluga in April-June in the spring lead system, but this hunt typically occurs only if there are no bowheads in the area. Communal hunts for beluga are conducted along the coastal lagoon system later in July-August.

Belugas typically represent a much greater proportion of the subsistence harvest in Kotzebue, Point Lay, and Point Hope. Point Lay's primary beluga hunt occurs from mid-June through mid-July, but can sometimes continue into August if early success is not sufficient. Point Hope residents hunt beluga primarily in the lead system during the spring (late March to early June), but also in open water along the coastline in July and August. Belugas are harvested in spring mid-June through mid-July in Kotzebue, but the timing can vary based on beluga movement. Belugas are harvested in coastal waters near these villages, generally within a few miles from shore. In the Chukchi, the anchor retrieval sites are located more than 60 mi (97 km) offshore, therefore proposed anchor handling in the project area would have no or minimal impacts on beluga hunts.

The retrieval of anchors around Kotzebue is located nearshore and has the most potential for disturbance to beluga harvest. Fairweather will be required to communicate with the Kotzebue Whaling Commission, AEWC, and Com Center (if established) during operations in this area to avoid any conflict. Vessels will move offshore if Fairweather is not cleared to conduct activities.

Disturbance associated with vessel traffic could potentially affect beluga hunts. However, all of the beluga hunt by Barrow residents in the Chukchi Sea, and much of the hunt by Wainwright residents would likely be completed before anchor handling activities would commence. Additionally, vessel traffic associated with the anchor handling program will be restricted under normal conditions to designated corridors that remain onshore or proceed directly offshore thereby minimizing the amount of traffic in coastal waters where beluga hunts take place. The designated vessel traffic corridors do not traverse areas indicated in recent mapping as utilized by Point Lay or Point Hope for beluga hunts, and avoids important beluga hunting areas in Kasegaluk Lagoon that are used by Wainwright.

Seals

Seals are an important subsistence resource and ringed seals make up the bulk of the seal harvest. Most ringed and bearded seals are harvested in the winter or in the spring before the anchor handling program would commence, but some harvest continues during open water and could possibly be affected by the planned activities. Spotted seals are also harvested during the summer. Most seals are harvested in coastal waters, with available maps of recent and past subsistence use areas indicating seal harvests have occurred only within 48–64 km (30–40 mi) of the coastline. The anchor handling retrieval sites are located more than 103 km (64 mi) offshore, so activities are thought to possibly have an impact on subsistence hunting for seals. Since most seal hunting is done during the winter and spring when the anchor handling program is not operational, NMFS considers that the potential effects to seal hunting are largely avoided.

Mitigation measures to be implemented include participation in operational Com Centers (below). With these mitigation measures and the nature of the proposed action, we are confident that any harassment of seals resulting from the 2016 anchor handling program will not have an unmitigable adverse impact on the availability of seals to be taken for subsistence uses.

Plan of Cooperation or Measures To Minimize Impacts to Subsistence Hunts

Regulations at 50 CFR 216.104(a)(12) require IHA applicants for activities that take place in Arctic waters to provide a Plan of Cooperation (POC) or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes.

Fairweather has prepared a draft POC, which was developed by identifying and evaluating any potential effects the proposed anchor retrieving operation might have on seasonal abundance that is relied upon for subsistence use.

Specifically, Fairweather will take important time periods into consideration when planning its anchor retrieving operation, including the beluga whale subsistence activities near Kotzebue and in the Chukchi Sea, and bowhead whale subsistence activities in the Chukchi and Beaufort seas. Fairweather plans to enter the Beaufort Sea as soon as Point Barrow is ice-free and be finished at the Sivulliq location well before the August 25th commencement date of bowhead whaling. Although not anticipated with the proposed schedule, if crew changes are needed, they will occur at either Wainwright or Prudhoe Bay depending on the location of the vessel. Fairweather will work with the community of Wainwright through its joint venture with Olgoonik Corporation. Through the establishment of village liaisons and onboard PSOs, Fairweather will ensure there are no conflicts with subsistence activities.

Fairweather has developed a Communication Plan and will implement this plan before initiating the anchor handling program. The Plan will help coordinate activities with local Com Centers and thus subsistence users, minimize the risk of interfering with subsistence hunting activities, and keep current as to the timing and status of the bowhead whale hunt and other subsistence hunts. The Communication Plan includes procedures for coordination with Com Centers to be located in coastal villages along the Chukchi Sea during the proposed anchor handling activities.

Fairweather attended the AEWC meeting in Barrow from February 3–5 and presented the project components and developing mechanisms to work with the communities to present consistent and concise information regarding the planned anchor handling program. Fairweather intends to sign a Conflict Avoidance Agreement (CAA).

Throughout 2016, Fairweather will continue its engagement with the marine mammal commissions and committees active in the subsistence harvests and marine mammal research.

Endangered Species Act (ESA)

Within the project area, the bowhead, humpback, and fin whales are listed as endangered under the ESA. NMFS' Permits and Conservation Division has initiated consultation with staff in NMFS' Alaska Region Protected Resources Division under section 7 of the ESA on the issuance of an IHA to Fairweather under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of an IHA.

National Environmental Policy Act (NEPA)

NMFS is preparing an Environmental Assessment (EA), pursuant to NEPA, to determine whether the issuance of an IHA to Fairweather for its anchor retrieval operation in the Chukchi and Beaufort seas during the 2016 Arctic open-water season may have a significant impact on the human environment. NMFS has released a draft of the EA for public comment along with this proposed IHA.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Fairweather for anchor retrieval operation in the Chukchi and Beaufort seas during the 2016 Arctic open-water season, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The proposed IHA language is provided next.

This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

(1) This Authorization is valid from July 1, 2016, through October 31, 2016.

(2) This Authorization is valid only for activities associated with anchor retrieval related activities in the Chukchi and Beaufort seas. The specific areas where Fairweather's operations will be conducted are within the Chukchi and Beaufort seas, Alaska, as shown in Figure 1 of Fairweather's IHA application.

(3)(a) The species authorized for incidental harassment takings by Level B harassment are: Beluga whales (*Delphinapterus leucas*); bowhead whales (*Balaena mysticetus*); gray whales (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), fin whale (*Balaenoptera physalus*), killer whale, (*Orcinus orca*), harbor porpoise (*Phocoena phocoena*), ringed seal (*Phoca hispida*), bearded seals (*Erignathus barbatus*); spotted seals (*P. largha*); and ribbon seals (*Histriophoca fasciata*).

(3)(b) The authorization for taking by harassment is limited to the following acoustic sources and from the following activities:

(i) Anchor retrieval operation; and

(ii) Vessel activities related to anchor retrieval operation, such as ice management.

(3)(c) The taking of any marine mammal in a manner prohibited under this Authorization must be reported within 24 hours of the taking to the Alaska Regional Administrator (907–586–7221) or his designee in Anchorage (907–271–3023), National Marine Fisheries Service (NMFS) and the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401, or her designee (301–427–8418).

(4) The holder of this Authorization must notify the Chief of the Permits and Conservation Division, Office of Protected Resources, at least 48 hours prior to the start of anchor retrieval activities (unless constrained by the date of issuance of this Authorization in which case notification shall be made as soon as possible).

(5) Prohibitions.

(a) The taking, by incidental harassment only, is limited to the species listed under condition 3(a) above and by the numbers listed in [Table 6 of this Notice]. The taking by serious injury or death of these species or the taking by harassment, injury or death of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this Authorization.

(b) The taking of any marine mammal is prohibited whenever the required source vessel protected species observers (PSOs), required by condition 7(a)(i), are not onboard in conformance with condition 7(a)(i) of this Authorization.

(6) Mitigation.

(a) Establishing Safety and Exclusion Zones.

(i) Establish a 500-m safety zone for anchor retrieving and ice management (although Level A takes are not expected when a marine mammal occur in this zone).

(ii) Establish a 500-m exclusion zone for sonar operations.

(b) Clearing Marine Mammals for Safety Zone before Anchor Retrieval or Ice Management Activities:

(i) When the vessel is positioned on-site, the protected species observers (PSOs) will 'clear' the area by observing the 500-m safety zone for 30 minutes; if no marine mammals are observed within those 30 minutes, anchor retrieval and/or ice management will commence.

(ii) If a marine mammal(s) is observed within the 500-m safety zone during the clearing, the PSO will continue to watch until the animal(s) is gone and has not returned for 15 minutes if the sighting was a pinniped, or 30 minutes if it was a cetacean.

(iii) Once the PSO has cleared the area, anchor retrieval and/or ice management operations may commence.

(iv) Should a marine mammal(s) be observed within the 500-m safety zone during the retrieval operations, the PSO will monitor and carefully record any reactions observed. PSOs will also collect behavioral information on marine mammals beyond the safety zone.

(c) Safety Zones Related to Sonar Operations.

(i) Prior to starting the sonar activity, the PSO will 'clear' the area by observing the 500-m exclusion zone for 30 minutes; if no marine mammals are observed within those 30 minutes, sonar activity will commence.

(ii) If a marine mammal(s) is observed within the 500-m exclusion zone during the clearing, the PSO will continue to watch until the animal(s) is gone and has not returned for 15 minutes if the sighting was a pinniped, or 30 minutes if it was a cetacean.

(iii) Once the PSO has cleared the area, sonar activity may commence.

(iv) If an animal enters the 500-m exclusion zone, sonar will be shut down immediately. Sonar activity will not resume until the marine mammal has cleared the exclusion zone. PSOs will also collect behavioral information on marine mammals beyond the exclusion zone.

(d) Vessel Movement Mitigation:

(i) If a marine mammal is detected outside the 500-m safety zone for anchor handling or the 500-m exclusion zone for sonar activities and, based on its position and the relative motion, is likely to enter those zones, the vessel's speed and/or direct course may, when practical and safe, be changed.

(ii) The marine mammal activities and movements relative to the vessels will be closely monitored to ensure that the marine mammal does not approach within either zone. If the mammal appears likely to enter the respective zone, further mitigative actions will be taken, *i.e.*, either further course alterations or shut down in the case of the sonar.

(iii) Vessel shall reduce its speed to 5 kt (9.26 km/h) or lower when within 900 ft (274 m) of cetaceans or pinnipeds.

(iv) Fairweather shall avoid transits within designated North Pacific right whale critical habitat. If transit within North Pacific right whale critical habitat cannot be avoided, vessel operators are requested to exercise extreme caution and observe the of 10 kt (18.52 km/h) vessel speed restriction while within North Pacific right whale critical habitat.

(v) Within the North Pacific right whale critical habitat, all vessels shall keep 2,625 ft (800 m) away from any observed North Pacific right whales and avoid approaching whales head-on consistent with vessel safety.

(e) Mitigation Measures for Subsistence Activities:

(i) For the purposes of reducing or eliminating conflicts between subsistence whaling activities and Fairweather's anchor retrieval program, Fairweather shall develop and implement a communication plan with subsistence communities.

(ii) Fairweather will prepare a daily report of project activities, sea conditions, and subsistence interactions, and send to all interested community leaders.

(iii) The daily reports will include a contact address and phone number where interested community leaders can convey any subsistence concerns.

(iv) Fairweather shall monitor the positions of all of its vessels and exercise due care in avoiding any areas where subsistence activity is active.

(v) Vessel transiting:

(A) The vessels will enter the Bering Strait and continue to the Chukchi Sea on or after 1 July, minimizing effects on marine mammals that frequent open leads and minimizing effects on spring and early summer bowhead whale hunting.

- The transit route for the vessels will avoid known protected ecosystems such as the Ledyard Bay Critical Habitat Unit (LBCHU), and will include coordination through Com Centers.
- PSOs will be aboard vessels.
- When within 805 m of whales, vessels will reduce speed, avoid separating members from a group and avoid multiple changes of direction.
- Vessel speed will be reduced during inclement weather conditions in order to avoid collisions with marine mammals.
- Personnel will communicate and coordinate with the Com Centers regarding all vessel transit.
- Vessels transiting in the Beaufort Sea east of Bullen Point to the Canadian border shall remain at least 5 miles offshore during transit along the coast, provided ice and sea conditions allow. During transit in the Chukchi Sea, vessels shall remain as far offshore as weather and ice conditions allow, and at all times at least 5 miles offshore.

(B) From August 31 to October 31, transiting vessels in the Chukchi Sea or Beaufort Sea shall remain at least 20 miles offshore of the coast of Alaska from Icy Cape in the Chukchi Sea to Pitt Point on the east side of Smith Bay in the Beaufort Sea, unless ice conditions or an emergency that threatens the safety of the vessel or crew prevents compliance with this requirement. This condition shall not apply to vessels actively engaged in transit to or from a coastal community to conduct crew changes or logistical support operations.

(C) Vessels shall be operated at speeds necessary to ensure no physical contact with whales occurs, and to make any other potential conflicts with bowheads or whalers unlikely. Vessel speeds shall be less than 10 knots in the proximity of feeding whales or whale aggregations (6 or more whales).

(D) If any vessel inadvertently approaches within 1.6 kilometers (1 mile) of observed bowhead whales, except when providing emergency assistance to whalers or in other emergency situations, the vessel operator will take reasonable precautions to avoid potential interaction with the bowhead whales by taking one or more of the following actions, as appropriate:

- Reducing vessel speed to less than 5 knots within 900 feet of the whale(s);
- Steering around the whale(s) if possible;
- Operating the vessel(s) in such a way as to avoid separating members of a group of whales from other members of the group;
- Operating the vessel(s) to avoid causing a whale to make multiple changes in direction; and
- Checking the waters immediately adjacent to the vessel(s) to ensure that no whales will be injured when the propellers are engaged.

(vii) Fairweather shall complete operations in time to allow such vessels to complete transit through the Bering Strait to a point south of 59 degrees North latitude no later than November 15, 2016. Any vessel that encounters weather or ice that will prevent compliance with this date shall coordinate its transit through the Bering Strait to a point south of 59 degrees North latitude with the appropriate Com-Centers. Fairweather vessels shall, weather and ice permitting, transit east of St. Lawrence Island and no closer than 10 miles from the shore of St. Lawrence Island.

(7) Monitoring:

(a) Vessel-based Visual Monitoring:

(i) Vessel-based visual monitoring for marine mammals shall be conducted by NMFS-approved protected species observers (PSOs) throughout the period of survey activities.

(ii) PSOs shall be stationed aboard the operating vessels through the duration of the anchor retrieval operation.

(iii) A sufficient number of PSOs shall be onboard the survey vessel to meet the following criteria:

(A) 100% monitoring coverage during all periods of survey operations in daylight;

(B) maximum of 4 consecutive hours on watch per PSO; and

(C) maximum of 12 hours of watch time per day per PSO.

(iv) The vessel-based marine mammal monitoring shall provide the basis for real-time mitigation measures as described in (6)(b) above.

(v) Results of the vessel-based marine mammal monitoring shall be used to calculate the estimation of the number of "takes" from the marine surveys and equipment recovery and maintenance program.

(b) Protected Species Observers and Training.

(i) PSO teams shall consist of Inupiat observers and NMFS-approved field biologists.

(ii) Experienced field crew leaders shall supervise the PSO teams in the field. New PSOs shall be paired with experienced observers to avoid situations where lack of experience impairs the quality of observations.

(iii) Crew leaders and most other biologists serving as observers in 2016 shall be individuals with experience as observers during recent marine mammal monitoring projects in Alaska, the Canadian Beaufort Sea, or other offshore areas in recent years.

(iv) Resumes for PSO candidates shall be provided to NMFS for review and acceptance of their qualifications. Inupiat observers shall be experienced in the region and familiar with the marine mammals of the area.

(v) All observers shall complete an observer training course designed to familiarize individuals with monitoring and data collection procedures. The training course shall be completed before the anticipated start of the 2016 open-water season. The training session(s) shall be conducted by qualified marine mammalogists with extensive crew-leader experience during previous vessel-based monitoring programs.

(vi) Training for both Alaska native PSOs and biologist PSOs shall be conducted at the same time in the same room. There shall not be separate training courses for the different PSOs.

(vii) Crew members should not be used as primary PSOs because they have other duties and generally do not have the same level of expertise, experience, or training as PSOs, but they could be stationed on the fantail of the vessel to observe the near field, especially the area around the airgun array, and implement a power-down or shutdown if a marine mammal enters the safety zone (or exclusion zone).

(viii) If crew members are to be used as PSOs, they shall go through some basic training consistent with the functions they will be asked to perform. The best approach would be for crew members and PSOs to go through the same training together.

(ix) PSOs shall be trained using visual aids (*e.g.*, videos, photos), to help them identify the species that they are likely to encounter in the conditions under which the animals will likely be seen.

(x) Fairweather shall train its PSOs to follow a scanning schedule that consistently distributes scanning effort according to the purpose and need for observations. All PSOs should follow the same schedule to ensure consistency in their scanning efforts.

(xi) PSOs shall be trained in documenting the behaviors of marine mammals. PSOs should record the primary behavioral state (*i.e.*, traveling, socializing, feeding, resting, approaching or moving away from vessels) and relative location of the observed marine mammals.

(c) Marine Mammal Observation Protocol.

(i) PSOs shall watch for marine mammals from the best available vantage point on the survey vessels, typically the bridge.

(ii) PSOs shall scan systematically with the unaided eye and 7 x 50 reticle binoculars, and night-vision equipment when needed.

(iii) Personnel on the bridge shall assist the marine mammal observer(s) in watching for marine mammals.

(iv) Monitoring shall consist of recording of the following information:

(A) The species, group size, age/size/sex categories (if determinable), the general behavioral activity, heading (if consistent), bearing and distance from vessel, sighting cue, behavioral pace, and apparent reaction of all marine mammals seen near the vessel (*e.g.*, none, avoidance, approach, paralleling, etc.);

(B) The time, location, heading, speed, and activity of the vessel, along with sea state, visibility, cloud cover and sun glare at (I) any time a marine mammal is sighted, (II) at the start and end of each watch, and (III) during a watch (whenever there is a change in one or more variable);

(C) The identification of all vessels that are visible within 5 km of the vessel from which observation is conducted whenever a marine mammal is sighted and the time observed;

(D) Any identifiable marine mammal behavioral response (sighting data should be collected in a manner that will not detract from the PSO's ability to detect marine mammals);

(E) Any adjustments made to operating procedures; and

(F) Visibility during observation periods so that total estimates of take can be corrected accordingly.

(vii) Distances to nearby marine mammals will be estimated with binoculars (7 x 50 binoculars) containing a reticle to measure the vertical angle of the line of sight to the animal relative to the horizon. Observers may use a laser rangefinder to test and improve their abilities for visually estimating distances to objects in the water.

(viii) PSOs shall understand the importance of classifying marine mammals as "unknown" or "unidentified" if they cannot identify the animals to species with confidence. In those cases, they shall note any information that might aid in the identification of the marine mammal sighted. For example, for an unidentified mysticete whale, the observers should record whether the animal had a dorsal fin.

(ix) Additional details about unidentified marine mammal sightings, such as "blow only," mysticete with (or without) a dorsal fin, "seal splash," etc., shall be recorded.

(x) Fairweather shall use the best available technology to improve detection capability during periods of fog and other types of inclement weather. Such technology might include night-vision goggles or binoculars as well as other instruments that incorporate infrared technology.

(d) Field Data-Recording and Verification.

(i) PSOs shall utilize a standardized format to record all marine mammal observations.

(ii) Information collected during marine mammal observations shall include the following:

(A) Vessel speed, position, and activity.

(B) Date, time, and location of each marine mammal sighting.

(C) Number of marine mammals observed, and group size, sex, and age categories.

(D) Observer's name and contact information.

(E) Weather, visibility, and ice conditions at the time of observation.

(F) Estimated distance of marine mammals at closest approach.

(G) Activity at the time of observation, including possible attractants present.

(H) Animal behavior.

(I) Description of the encounter.

(J) Duration of encounter.

(K) Mitigation action taken.

(iii) Data shall be recorded directly into handheld computers or as a back-up, transferred from hard-copy data sheets into an electronic database.

(iv) A system for quality control and verification of data shall be facilitated by the pre-season training, supervision by the lead PSOs, and in-season data checks, and shall be built into the software.

(v) Computerized data validity checks shall also be conducted, and the data shall be managed in such a way that it is easily summarized during and after the field program and transferred into statistical, graphical, or other programs for further processing.

(e) Marine Mammal Behavioral Response Study.

(i) PSOs will collect behavioral response data to the presence of vessels during transit on walruses and seals or during its anchor retrieving operations.

(ii) PSOs will record the initial and subsequent behaviors of marine mammals using a focal following approach. Marine mammals will be observed until they disappear from the PSO's view. Observers will also record any behaviors that marine mammals may have in response to the vessel.

(9) Reporting:

(a) The results of Fairweather's anchor retrieval program monitoring reports will be presented in weekly and monthly reports and a 90-day final report. The initial final reports are due to NMFS within 90 days after the expiration of the IHA. The reports will include

(i) Summaries of monitoring effort (*e.g.,* total hours, total distances, and marine mammal distribution through the project period, accounting for sea state and other factors affecting visibility and detectability of marine mammals);

(ii) Summaries that represent an initial level of interpretation of the efficacy, measurements, and observations, rather than raw data, fully processed analyses, or a summary of operations and important observations;

(iii) Information on distances marine mammals are sighted from operations and the associated noise isopleth for active sound sources (*i.e.,* anchor retrieval, ice management, side scan sonar);

(vi) Analyses of the effects of various factors influencing detectability of marine mammals (*e.g.,* sea state, number of observers, and fog/glare);

(v) Species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover;

(vi) Estimates of uncertainty in all take estimates, with uncertainty expressed by the presentation of confidence limits, a minimum-maximum, posterior probability distribution, or another applicable method, with the exact approach to be selected based on the sampling method and data available; and

(vii) A clear comparison of authorized takes and the level of actual estimated takes.

(b) The draft report shall be subject to review and comment by NMFS. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS. The draft report will be considered the final report for this activity under this Authorization if NMFS has not provided comments and recommendations within 90 days of receipt of the draft report.

(c) In the unanticipated event that the construction activities clearly cause the take of a marine mammal in a manner prohibited by this Authorization (if issued), such as an injury, serious injury, or mortality, Fairweather shall immediately cease all operations and immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinators. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) Description of the incident;

(iii) Status of all sound source use in the 24 hours preceding the incident;

(iv) Environmental conditions (*e.g.,* wind speed and direction, sea state, cloud cover, visibility, and water depth);

(v) Description of marine mammal observations in the 24 hours preceding the incident;

(vi) Species identification or description of the animal(s) involved;

(vii) The fate of the animal(s); and

(viii) Photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with Fairweather to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Fairweather may not resume their activities until notified by NMFS via letter, email, or telephone.

(d) In the event that Fairweather discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), Fairweather will immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinators. The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Fairweather to determine whether modifications in the activities are appropriate.

(e) In the event that Fairweather discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Fairweather shall report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinators, within 24 hours of the discovery. Fairweather shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Fairweather can continue its operations under such a case.

(10) Activities related to the monitoring described in this Authorization do not require a separate scientific research permit issued under section 104 of the Marine Mammal Protection Act.

(11) The Plan of Cooperation outlining the steps that will be taken to cooperate and communicate with the native communities to ensure the availability of marine mammals for subsistence uses, must be implemented.

(12) This Authorization may be modified, suspended, or withdrawn if the holder fails to abide by the conditions prescribed herein or if the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals, or if there is an unmitigable adverse impact on the availability of such species or stocks for subsistence uses.

(13) A copy of this Authorization and the Incidental Take Statement must be in the possession of each vessel operator taking marine mammals under the authority of this Incidental Harassment Authorization.

(14) Fairweather is required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to NMFS' Biological Opinion.

Request for Public Comments

NMFS requests comment on our analysis, the draft authorization, and any other aspect of the Notice of Proposed IHA for Fairweather's proposed anchor retrieval operation in the Chukchi and Beaufort seas. Please include with your comments any supporting data or literature citations to help inform our final decision on Fairweather's request for an MMPA authorization.

Dated: May 16, 2016.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–11799 Filed 5–18–16; 8:45 am]

BILLING CODE 3510–22–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. Sec. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, CNCS is soliciting comments concerning its proposed renewal of Independent Living Performance Measures Aggregation Tool and the two surveys that are associated with it. The instrument is currently being used by existing Senior Companion Program grantees. Copies of the information collection request can be obtained by contacting the office listed in the Addresses section of this Notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by July 18, 2016.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, Office of Research and Evaluation; Attention Anthony Nerino, Research Analyst, Room #3235E, 250 E St. SW., Washington, DC, 20525.

(2) By hand delivery or by courier to the CNCS mailroom at the mail room on the 4th floor at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) Electronically through *www.regulations.gov.*

Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Anthony Nerino, 202–606–3913, or by email at *anerino@cns.gov.*

SUPPLEMENTARY INFORMATION: CNCS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submissions of responses).

Background

Senior Companion Program grantees are required to use the currently cleared surveys to solicit outcome data from clients and caregivers served by Senior Companion volunteers.

Current Action

CNCS seeks to renew the current information collection instrument aggregation tool and surveys. The information collection will be used in the same manner as the existing surveys and aggregation tool. CNCS also seeks to continue using the current information collection until the revised instruments are approved by OMB. The current application is due to expire on July 31, 2016.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Independent Living Performance Measures Aggregation Tool and Independent Living and Respite Surveys.

OMB Number: 3045–0152.

Agency Number: None.

Affected Public: Senior Companion Program grantees.

Total Respondents: 53,470.

Frequency: Once.

Average Time per Response: Averages 30 minutes.

Estimated Total Burden Hours: 26,735 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 13, 2016.

Mikel Herrington,

Acting Director Senior Corps.

[FR Doc. 2016–11834 Filed 5–18–16; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2016–HQ–0016]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army proposes to alter a system of records notice, A0040–905 DASG, entitled "Defense Privately Owned Animal Record Files." This system records registration, vaccination, and/or treatment of animals; to compile statistical data; and to identify animals registered with the Veterinary Treatment Facility. It is used by veterinarians and health care authorities to identify the animal, verify ownership, record history, and to insure veterinary care, treatment, and immunizations provided to animals of authorized owners is recorded; to compile statistical data; conduct research; teach; assist in law enforcement, to include investigation and litigation; and evaluate the care provided.

DATES: Comments will be accepted on or before June 20, 2016. This proposed action will be effective the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy Rogers, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905 or by calling (703) 428–7499.

SUPPLEMENTARY INFORMATION: The Department of the Army's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/.*

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, as amended were submitted on May 2, 2016, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 16, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0040–905 DASG

SYSTEM NAME:

Defense Privately Owned Animal Record Files (January 8, 2001, 66 FR 1312)

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with "Defense Privately Owned Animal Records."

SYSTEM LOCATION:

Delete entry and replace with "Veterinary medical facilities on DoD bases and installations where veterinary services are provided. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Eligible military personnel (including retirees and reservists), DoD civilians, and their family members who utilize base veterinary services for care of their privately owned animals."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Owner/Sponsor's full name, grade/rank, branch of service, home address, personal telephone number, and business or work email address; military status; name of animal, record of treatment for the animal, billing statements, and related veterinary medical information."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 3013, Secretary of the Army; DoD Directive 6400.04E, DoD Veterinary Public and Animal Health Services; and Army Regulation 40–905, Veterinary Health Services."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To civilian veterinary and medical institutions, Federal, State, and local agencies to provide data used in preventative health and zoonotic disease control programs; report medical conditions required by law; and accrediting the Veterinary Corps Officers for training and instruction.

The DoD Blanket Routine Uses set forth at the beginning of the Army's compilation of systems of records notices may apply to this system. The complete list of DoD blanket routine uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx.*"

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with "Electronic storage media and paper records."

RETRIEVABILITY:

Delete entry and replace with "By owner's or animal's name, animal's microchip number."

SAFEGUARDS:

Delete entry and replace with "Records are maintained in buildings which are locked when unattended and are accessed only by authorized personnel having an official need-to-know. DoD Components and approved users ensure that electronic and paper records collected and used are maintained in controlled areas accessible only to authorized personnel. Access to computerized data is restricted by use of common access cards (CACs) and is accessible only by users with an authorized account. The system and electronic backups are maintained in controlled facilities that employ physical restrictions and safeguards such as security guards, identification badges, key cards, and locks."

RETENTION AND DISPOSAL:

Delete entry and replace with "Paper records are destroyed upon death of the animal, transfer of owner, or 3 years after last entry in the record. Paper records are shredded. Electronic records are maintained permanently."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this system should address written inquiries to the veterinary facility at the installation where their animal was treated or euthanized.

Individuals should provide their full name, home address, telephone number, and any identifiable information for their animal, to include microchip number if applicable.

IN ADDITION, THE REQUESTER MUST PROVIDE A NOTARIZED STATEMENT OR AN UNSWORN DECLARATION MADE IN ACCORDANCE WITH 28 U.S.C. 1746, IN THE FOLLOWING FORMAT:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).' "

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system should address written inquiries to the veterinary facility at the installation where their animal was treated or euthanized.

Individuals should provide their full name, home address, telephone number, and any identifiable information for their animal, to include microchip number if applicable.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'

Personal visits may be made to the veterinary facility where animal was treated. Owners must provide personal identification such as a valid military identification card or driver's license."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in 32 CFR part 505, Army Privacy Program; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "From the individual and veterinarian reports."

* * * * *

[FR Doc. 2016–11808 Filed 5–18–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2016–OS–0060]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to add a New System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to establish a new system of records, DUSDI 01–DoD, entitled the "Department of Defense (DoD) Insider Threat Management and Analysis Center (DITMAC) and DoD Component Insider Threat Records System." This system has been established to enable DoD to implement the requirements of Executive Order 13587, Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information (October 7, 2011), and the National Insider Threat Policy and Minimum Standards for Executive Branch Insider Threat Programs (November 21, 2012). For purposes of this system of records, the term "insider threat" is defined in the Minimum Standards for Executive Branch Insider Threat Programs which were issued by the National Insider Threat Task Force based on directions provided in Section 6.3(b) of Executive Order 13587. The system will be used to analyze, monitor, and audit insider threat information for insider threat detection and mitigation within DoD on threats that insiders may pose to DoD and U.S. Government installations, facilities, personnel, missions, or resources. The system will support the DITMAC and DoD Component insider threat programs, enable the identification of systemic insider threat issues and challenges, provide a basis for the development and recommendation of solutions to mitigate potential insider threats, and assist in identifying best practices amongst other Federal Government insider threat programs.

DATES: Comments will be accepted on or before June 20, 2016. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: The public, OMB, and Congress are invited to submit any comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Cindy Allard, Director of the Defense Privacy, Civil Liberties, and Transparency Division, 703–571–0070.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at *http://dpcld.defense.gov/*.The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 29, 2016, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 13, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DUSDI 01–DoD

SYSTEM NAME:

Department of Defense (DoD) Insider Threat Management and Analysis Center (DITMAC) and DoD Component Insider Threat Records System

SYSTEM LOCATION:

Primary location: Defense Security Service (DSS), 27130 Telegraph Rd., Quantico VA 22134–2253.

SECONDARY AND DECENTRALIZED LOCATIONS:

Each of the DoD Components including the Departments of the Army, Air Force, and Navy and staffs, field operating agencies, major commands, installations, and activities. Official mailing addresses are published with each Component's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are those who had or have been granted eligibility for access to classified information or eligibility to hold a sensitive position, and who have exhibited actual, probable, or possible indications of insider threat behaviors or activities. These individuals include active and reserve component (including National Guard) military personnel, civilian employees (including non-appropriated fund employees), and DoD contractor personnel; this includes officials or employees from Federal, state, Local, Tribal and Private Sector entities affiliated with or working with DoD who have been granted access to classified information by DoD based on an eligibility determination made by DoD or by another Federal agency authorized to do so.

Individuals or persons embedded with DoD units operating abroad who had or have been granted eligibility for access to classified information or eligibility to hold a sensitive positions, and who have exhibited actual, probable, or possible indications of insider threat behaviors or activities.

Current members of the U.S. Coast Guard and mobilized retired military personnel, when activated, who had or have been granted eligibility for access to classified information or eligibility to hold a sensitive positions by DoD and when operating with the military services or DoD Components, and Limited Access Authorization grantees, who have exhibited actual, probable, or possible indications of insider threat behaviors or activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing information can be derived from:

Responses to information requested by official questionnaires (*e.g.*, SF 86 Questionnaire for National Security Positions) that include: Full name, former names and aliases; date and place of birth; social security number (SSN); height and weight; hair and eye color; gender; ethnicity and race; biometric data; mother's maiden name; DoD identification number; current and former home and work addresses, phone numbers, and email addresses; employment history; military record information; selective service registration record; residential history; education history and degrees earned; names of associates and references with their contact information; citizenship information; passport information; driver's license information; identifying numbers from access control passes or identification cards; criminal history; civil court actions; prior personnel security eligibility, investigative, and adjudicative information, including information collected through continuous evaluation; mental health history; records related to drug and/or alcohol use; financial record information; credit reports; the name, date and place of birth, social security number, and citizenship information for spouse or cohabitant; the name and marriage information for current and former spouse(s); the citizenship, name, date and place of birth, and address for relatives;

Information on foreign contacts and activities; association records; information on loyalty to the United States; and other agency reports furnished to DoD or collected by DoD in connection with personnel security investigations, continuous evaluation for eligibility for access to classified information, and insider threat detection programs operated by DoD Components pursuant to Federal laws and Executive Orders and DoD regulations. These records can include, but are not limited to: Reports of personnel security investigations completed by investigative service providers (such as the Office of Personnel Management);

Polygraph examination reports; nondisclosure agreements; document control registries; courier authorization requests; derivative classification unique identifiers; requests for access to sensitive compartmented information (SCI); facility access records; security violation files; travel records; foreign contact reports; briefing and debriefing statements for special programs, positions designated as sensitive, other information and documents required in connection with personnel security adjudications; and financial disclosure filings

DOD COMPONENT INFORMATION, SUMMARIES OR REPORTS, AND FULL REPORTS, ABOUT POTENTIAL INSIDER THREATS FROM:

a. Payroll information, travel vouchers, benefits information, credit reports, equal employment opportunity complaints, performance evaluations, disciplinary files, training records, substance abuse and mental health records of individuals undergoing law enforcement action or presenting an identifiable imminent threat, counseling statements, outside work and activities requests, and personal contact records.

b. particularly sensitive or protected information, including information held by special access programs, law enforcement, inspector general, or other investigative sources or programs. Access to such information may require additional approval by the senior DoD official who is responsible for managing and overseeing the program.

c. reports of investigation regarding security violations, including but not limited to: statements, declarations, affidavits and correspondence; incident reports; investigative records of a criminal, civil or administrative nature; letters, emails, memoranda, and reports; exhibits and evidence; and, recommended remedial or corrective actions for security violations;

DoD Component information, summaries of reports, and full reports, about potential insider threats regarding: Personnel user names and aliases, levels of network access, audit data, information regarding misuse of a DoD device, information regarding unauthorized use of removable media, and logs of printer, copier, and facsimile machine use.

Information collected through user activity monitoring, which is the technical capability to observe and record the actions and activities of all users, at any time, on a computer network controlled by DoD or a component thereof in order to deter, detect, and/or mitigate insider threats as well as to support authorized investigations. Such information may include key strokes, screen captures, and content transmitted via email, chat, or data import or export.

DoD Component summaries of reports, and full reports, about potential insider threats from records of usage of government telephone systems, including the telephone number initiating the call, the telephone number receiving the call, and the date and time of the call.

DoD Component information, summaries of reports, and full reports, about potential insider threats obtained from other Federal Government sources, such as information regarding U.S. border crossings and financial information obtained from the Financial Crimes Enforcement Network.

Information related to the management and operation of DoD Component insider threat programs, including but not limited to: Information related to investigative or analytical efforts by DoD insider threat program personnel to identify threats to DoD personnel, property, facilities, and information; information obtained from Intelligence Community members, the Federal Bureau of Investigation, or from other agencies or organizations about individuals known or suspected of being engaged in conduct constituting, preparing for, aiding, or relating to an insider threat, including but not limited to espionage or unauthorized disclosure of classified national security information.

Publicly available information, such as information regarding: Arrests and detentions; real property; bankruptcy; liens or holds on property; vehicles; licensure (including professional and pilot's licenses, firearms and explosive permits); business licenses and filings; and from social media.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 137, Under Secretary of Defense for Intelligence; 44 U.S.C. 3554, Federal agency responsibilities; 44 U.S.C. 3557, National security systems; Public Law 112–81, Section 922, National Defense Authorization Act for Fiscal Year 2012 (NDAA for FY12), Insider Threat Detection (10 U.S.C. 2224 note); Public Law 113–66, Section 907(c)(4)(H), (NDAA for FY14), Personnel security (10 U.S.C. 1564 note); Public Law 114–92, Section 1086 (NDAA for FY16), Reform and improvement of personnel security, insider threat detection and prevention, and physical security (10 U.S.C. 1564 note); E.O. 12829, as amended, National Industrial Security Program; E.O. 12968, as amended, Access to Classified Information; E.O. 13467, Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information, June 30, 2008; E.O. 9397, as amended, Numbering System for Federal Accounts Relating to Individual Persons; E.O. 13587, Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information; National Insider Threat Policy and Minimum Standards for Executive Branch Insider Threat Programs; and DoD Directive (DoDD) 5205.16, The DoD Insider Threat Program.

PURPOSE(S):

The Department of Defense proposes to establish a new system of records to assist in the management of the DITMAC Program and DoD Component insider threat programs. The DITMAC was established by the Undersecretary of Defense for Intelligence in order to consolidate and analyze insider threat information reported by the DoD Component insider threat programs mandated by Presidential Executive Order 13587, issued October 7, 2011, which required Federal agencies to establish an insider threat detection and prevention program to ensure the security of classified networks and the responsible sharing and safeguarding of classified information consistent with appropriate protections for privacy and civil liberties. The DITMAC helps prevent, deter, detect, and/or mitigate the potential threat that personnel, including DoD military personnel, civilian employees, and contractor personnel, who have or had been granted eligibility for access to classified information or eligibility to hold a sensitive position may harm the security of the United States. This threat can include damage to the United States through espionage, terrorism, unauthorized disclosure of national security information, or through the loss or degradation of departmental resources or capabilities. The system will be used to analyze, monitor, and audit insider threat information for insider threat detection and mitigation within DoD on threats that persons who have or had been granted eligibility for access to classified information or eligibility to hold a sensitive position may pose to DoD and U.S. Government installations, facilities, personnel, missions, or resources. The system will support DoD Component insider threat programs, enable the identification of systemic insider threat issues and challenges, provide a basis for the development and recommendation of solutions to deter, detect, and/or mitigate potential insider threats. It will assist in identifying best practices among other Federal Government insider threat programs, through the use of existing DoD resources and functions and by leveraging existing authorities, policies, programs, systems, and architectures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to disclosures permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records may be disclosed outside DoD as a routine use pursuant to 5 U.S.C. 552(b)(3) as follows:

Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether Federal, state, local, tribal, territorial, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To an appropriate federal, state, local, tribal, territorial, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, delegation or designation of authority, or other benefit, or if the information is relevant and necessary to a DoD decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, delegation or designation of authority, or other benefit and disclosure is appropriate to the proper performance of the official duties of the person making the request.

To the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

A record consisting of, or relating to, terrorism information, homeland security information, counterintelligence, or law enforcement information may be disclosed to a Federal, state, local, tribal, territorial, foreign government, multinational agency, and to a private sector agent either in response to its request or upon the initiative of the DoD Component, for purposes of sharing such information as is necessary and relevant to the agency's investigations and inquiries related to the detection, prevention, disruption, preemption, and mitigation of the effects of terrorist activities against the territory, people, and interests of the United States of America as contemplated by the Intelligence Reform and Terrorism Protection Act of 2004.

To any person, organization, or governmental entity in order to notify them of a serious terrorist threat for the purpose of guarding against or responding to such a threat.

To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to the DoD DITMAC system of records.

To Federal, state, local, territorial, tribal, foreign, or international licensing agencies or associations that require information concerning the suitability or eligibility of an individual for a license.

To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

To appropriate agencies, entities, and persons when (1) the Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Component's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

To foreign law enforcement, security, investigatory, or administrative authorities to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements, including those regulating the stationing and status in foreign countries of DoD military and civilian personnel.

To any agency, organization, or individual for the purposes of performing audit or oversight of the DoD DITMAC as authorized by law and as necessary and relevant to such audit or oversight functions.

To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

To third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the individual making the disclosure.

To a Federal agency or entity that may have information relevant to an allegation or investigation or was consulted regarding an insider threat for purposes of obtaining guidance, additional information, or advice from such Federal agency or entity regarding the handling of an insider threat matter.

To a court or adjudicative body in a proceeding when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States Government is a party to litigation or has interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

To the news media or the general public, factual information the disclosure of which would be in the public interest and which would not constitute an unwarranted invasion of personal privacy.

To a Federal, state, or local agency, or other appropriate entities or individuals, or through established liaison channels to selected foreign governments, in order to enable an intelligence agency to carry out its responsibilities under the National Security Act of 1947 as amended, the CIA act of 1949 as emended, Executive Order 12333 or any successor order, applicable national security directives, or classified implementing procedures approved by the Attorney General and promulgated pursuant to such statutes, orders or directives.

STORAGE:

Paper and electronic storage media.

RETRIEVABILITY:

Information in this system may be retrieved by name, SSN, and/or DoD identification number.

SAFEGUARDS:

IT systems are protected by military personnel, civilian employee, or contract security personnel guards. Physical access to rooms is controlled by combination lock and by identification badges that are issued only to authorized individuals. Electronic authorization and authentication of users is required at all points before any system information can be accessed. All data transfers and information retrievals that use remote communication facilities are required to be encrypted. Paper records are contained and stored in safes and filing cabinets that are located in a secure area with access only by authorized personnel.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration (NARA) disposition schedule is approved, treat as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Department of Defense Insider Threat Management and Analysis Center, Assistant Director, Enterprise Tools and Architecture, Defense Security Service, 27130 Telegraph Road, Quantico, VA 22134–2253.

DoD Components including the Departments of the Army, Air Force, and Navy and staffs, field operating agencies, major commands, installations, and activities. Official mailing addresses are published as an appendix to each Service's compilation of systems of records notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in the DITMAC system of records should address written inquires to the Defense Security Service, Office of FOIA and PA, 27130 Telegraph Road, Quantico, VA 22134–2253.

Individuals seeking to determine whether information about themselves is contained in any specific DoD Component's insider threat program system of records should address written inquiries to the official mailing address for that Component, which is published with each Component's compilation of systems of records notices.

DOD COMPONENT ADDRESSES ARE ALSO LISTED AT: *http://dpcld.defense.gov/Privacy/PrivacyContacts.aspx.*

Signed, written requests must contain the full name (and any alias and/or alternate names used), SSN, and date and place of birth.

RECORD ACCESS PROCEDURES:

Individuals seeking information about themselves contained in the DITMAC system of record should address written inquires to the Defense Security Service, Office of FOIA and PA, 27130 Telegraph Road, Quantico, VA 22134–2253.

Individuals seeking information about themselves contained in any specific DoD Component's insider threat program system of records should address written inquiries to the official mailing address for that Component, which is published with each Component's compilation of systems of records notices.

DOD COMPONENT ADDRESSES ARE ALSO LISTED AT: *http://dpcld.defense.gov/Privacy/PrivacyContacts.aspx.*

Individuals should provide their full name (and any alias and/or alternate name), SSN, and date and place of birth, and the address where the records are to be returned.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

IF EXECUTED OUTSIDE OF THE UNITED STATES:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

IF EXECUTED WITHIN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS, OR COMMONWEALTHS:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature). '

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

CONTESTING RECORD PROCEDURES:

The DoD rules for accessing records and for contesting or appealing agency determinations are published in DoD Regulation 5400.11; 32 CFR 310; or may be obtained from the Defense Privacy, Civil Liberties, and Transparency Division, 4800 Mark Center Drive; ATTN: DPCLTD, Mailbox #24; Alexandria, VA 22350–1700.

RECORD SOURCE CATEGORIES:

Information in the system is received from DoD Components and program offices throughout DoD and DoD contractor databases, external sources, including counterintelligence and security databases and files; personnel security databases and files; DoD Component human resources databases and files; Office of the Chief Information Officer and information assurance databases and files; information collected through user activity monitoring; DoD telephone usage records; Federal, state, tribal, territorial, and local law enforcement and investigatory records; Inspector General records; available U.S. Government intelligence and counterintelligence reporting information and analytic products pertaining to adversarial threats; other Federal agencies; and publicly available information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Department of Defense is exempting records maintained in DUSDI 01–DoD, the "Department of Defense (DoD) Insider Threat Management and Analysis Center (DITMAC) and DoD Component Insider Threat Records System," from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G), (H), and (I), (5), and (8); (f); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(1), (2), (4), (5), (6), (7). In addition, exempt records received from other systems of records in the course of DITMAC or Component record checks may, in turn, become part of the case records in this system. When records are exempt from disclosure in systems of records for record sources accessed by this system, DoD also claims the same exemptions for any copies of such records received by and stored in this system.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 310. For additional information contact the system manager.

[FR Doc. 2016–11703 Filed 5–18–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2015–HQ–0013]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by June 20, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Risk Management Information (RMI) System; OPNAV 5102/10, OSHA Form 301; OMB Control Number 0703–XXXX.

Type of Request: New Collection.

Number of Respondents: 25.

Responses per Respondent: 1.

Annual Responses: 25.

Average Burden per Response: 1.5 hours.

Annual Burden Hours: 37.5.

Needs and Uses: The information collection requirement is necessary to collect information on injuries/fatalities, occupational illnesses required of Federal governmental agencies by the Occupational Safety and Health Administration (OSHA), and pertinent information for property damage occurring during DON operations. The data maintained in this system will be used for analytical purposes to improve the Department of the Navy's accident prevention policies, procedures, standards and operations, as well as to ensure internal data quality assurance. The collection will also help to ensure that all individuals receive required safety, fire, security, force protection, and emergency management training courses necessary to perform assigned duties and comply with Federal, DoD, and DON related regulations.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: May 16, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–11809 Filed 5–18–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0062]

Agency Information Collection Activities; Comment Request; Study of School Climate Transformation Grants

AGENCY: Office of Planning, Evaluation and Policy Development (OPEPD), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before July 18, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0062. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Joanne Bogart, 202–205–7855.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Study of School Climate Transformation Grants.

OMB Control Number: 1875–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 268.

Total Estimated Number of Annual Burden Hours: 380.

Abstract: This study examines how state departments of education and school districts that have received multiple federal grants coordinate the activities across those grants. U.S. Department of Education-funded School Climate Transformation Grants aim to improve school safety by supporting schools in the implementation of an evidence-based, multi-tiered system of behavioral support. Department of Health and Human Services-supported Project AWARE grants aim to increase access to mental health services by training adults to notice signs of behavioral health distress and intervene appropriately. Department of Justice-funded School Justice Collaboration Program grants supports courts' collaboration with schools to implement diversion and similar programs to minimize juvenile detention. The study will explore the nature of coordination across grants, the perceived value of coordination, and challenges and lessons learned.

Dated: May 16, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–11783 Filed 5–18–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Certification Notice—240]

Notice of Filing of Self-Certification of Coal Capability Under the Power Plant and Industrial Fuel Use Act

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of filing.

SUMMARY: On April 12, 2016, Calpine New Jersey Generation, LLC, as owner and operator of a new combined cycle electric generating power plant, submitted a coal capability self-certification to the Department of Energy (DOE) pursuant to § 201(d) of the Power Plant and Industrial Fuel Use Act of 1978 (FUA), as amended, and DOE regulations in 10 CFR 501.60, 61. The FUA and regulations thereunder require DOE to publish a notice of filing of self-certification in the **Federal Register**. 42 U.S.C. 8311(d) and 10 CFR 501.61(c).

ADDRESSES: Copies of coal capability self-certification filings are available for public inspection, upon request, in the Office of Electricity Delivery and Energy Reliability, Mail Code OE–20, Room 8G–024, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence at (202) 586–5260.

SUPPLEMENTARY INFORMATION: Title II of the FUA, as amended (42 U.S.C. 8301 *et seq.*), provides that no new base load electric power plant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. Pursuant to the FUA, in order to meet the requirement of coal capability, the owner or operator of such a facility proposing to use natural gas or petroleum as its primary energy source shall certify to the Secretary of Energy (Secretary) prior to construction, or prior to operation as a base load electric power plant, that such power plant has the capability to use coal or another alternate fuel. Such certification establishes compliance with FUA section 201(a) as of the date it is filed with the Secretary. 42 U.S.C. 8311.

The following owner of a proposed new combined cycle electric generating power plant has filed a self-certification of coal-capability with DOE pursuant to FUA section 201(d) and in accordance with DOE regulations in 10 CFR 501.60, 61:

Owner: Calpine New Jersey Generation, LLC.

Capacity: GE Nominal 446 megawatts (MW) or Siemens Nominal 456 megawatts (MW).

Plant Location: 373 North Broadway, Pennsville, New Jersey 08070.

In-Service Date: On or after June 1, 2019.

Issued in Washington, DC, on May 13, 2016.

Christopher Lawrence,

Electricity Policy Analyst, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2016–11811 Filed 5–18–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board (SEAB). SEAB was reestablished pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) (the Act). This notice is provided in accordance with the Act.

DATES: Tuesday, June 14, 2016; 8:30 a.m.–12:00 p.m.

ADDRESSES: Idaho National Laboratory (INL) Meeting Center, 775 University Boulevard, Idaho Falls, Idaho, 83415.

FOR FURTHER INFORMATION CONTACT: Karen Gibson, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; *seab@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Board was established to provide advice and recommendations to the Secretary on the Department's basic and applied research, economic and national security policy, educational issues, operational issues, and other activities as directed by the Secretary.

Purpose of the Meeting: This meeting is the quarterly meeting of the Board.

Tentative Agenda: The meeting will start at 8:30 a.m. on June 14th. The tentative meeting agenda includes: Updates from SEAB's task forces, informational briefings on R&D for the future of nuclear energy and on cybersecurity, and an opportunity for comments from the public. The meeting will conclude at 12:00 p.m. Agenda updates will be posted on the SEAB Web site prior to the meeting: *www.energy.gov/seab.*

Public Participation: The meeting is open to the public. Individuals who would like to attend must RSVP to Karen Gibson no later than 5:00 p.m. on Thursday, June 9, 2016 at *seab@hq.doe.gov.* Please provide your name, organization, citizenship, and contact information. Anyone attending the meeting will be required to present government issued identification.

Individuals and representatives of organizations who would like to offer comments and suggestions may do so during the meeting. Approximately 30 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed 5 minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so beginning at 8:15 a.m. on June 14th. A sign in sheet will be provided for this purpose.

Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to Karen Gibson, U.S. Department of Energy, 1000 Independence Avenue SW., Washington DC 20585, email to *seab@hq.doe.gov.*

Minutes: The minutes of the meeting will be available on the SEAB Web site or by contacting Ms. Gibson. She may be reached at the postal address or email address above, or by visiting SEAB's Web site at *www.energy.gov/seab.*

Issued in Washington, DC, on May 13, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–11828 Filed 5–18–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 16–33–LNG]

American LNG Marketing, LLC; Application for Blanket Authorization To Export Liquefied Natural Gas to Non-Free Trade Agreement Nations on a Short-Term Basis

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on March 8, 2016, by American LNG Marketing, LLC (American LNG), requesting blanket authorization to export liquefied natural gas (LNG) in an amount up to the equivalent of 6.04 billion cubic feet (Bcf) of natural gas on a cumulative basis over a two-year period commencing May 1, 2016. The LNG would be exported from a natural gas liquefaction facility located near Medley, Florida (Hialeah Facility) to any country with the capacity to import LNG in approved ISO IMO7/TVAC–ASME LNG (ISO) containers on container ships or roll-on/roll-off ocean-going carriers and with which trade is not prohibited by U.S. law or policy.

To date, American LNG has been granted, multi-contract authorizations for 20 year terms under DOE/FE Order Nos. 3601 and 3690 to export LNG in a volume equivalent to 3.02 Bcf per year of natural gas from the Hialeah Facility to any country with which the United States has a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries), and to any country with which the United States does not have a FTA requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries).[1] The volumes authorized for export in Order Nos. 3601 and 3690 are not additive.

American LNG states that, in anticipation of the start of liquefaction operations at the Hialeah Facility, it

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[1] *See* App. at 3.

requests this blanket authorization to engage in short-term exports of LNG produced if and when appropriate market opportunities arise. According to American LNG, the requested volume is not additive to the volume authorized in DOE/FE Order 3601 and 3690. American LNG seeks to export this LNG on its own behalf and as agent for other parties who will hold title to the LNG at the time of export. The Application was filed under section 3 of the Natural Gas Act (NGA). Additional details can be found in American LNG's Application, posted on the DOE/FE Web site at: *http://energy.gov/sites/prod/files/2016/04/f30/16-33-LNG.pdf.*

Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, June 20, 2016.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine Moore or Ben Nussdorf, U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478; (202) 586–7893.

Edward Myers, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9793.

SUPPLEMENTARY INFORMATION:

DOE/FE Evaluation

The Application will be reviewed pursuant to section 3 of the NGA, as amended, and the authority contained in DOE Delegation Order No. 00–002.00N (July 11, 2013) and DOE Redelegation Order No. 00–006.02 (Nov. 17, 2014). In reviewing this Application, DOE will consider domestic need for the natural gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing parties to freely negotiate their own commercial trade arrangements. As part of this analysis, DOE will consider the following two studies examining the cumulative impacts of exporting domestically produced LNG:

- *Effect of Increased Levels of Liquefied Natural Gas on U.S. Energy Markets,* conducted by the U.S. Energy Information Administration upon DOE's request (2014 EIA LNG Export Study);[2] and
- *The Macroeconomic Impact of Increasing U.S. LNG Exports,* conducted jointly by the Center for Energy Studies at Rice University's Baker Institute for Public Policy and Oxford Economics, on behalf of DOE (2015 LNG Export Study).[3]

Parties that may oppose this Application should comment in their responses on these issues and studies.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* also requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. American LNG states that no changes to the Liquefaction Project facilities would be required for the short-term exports requested in the Application. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Interested parties will be provided 30 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 16–33–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Regulation and International Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation and International Engagement at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 16–33–LNG. **Please Note:** If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Office of Regulation and International Engagement docket room, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address:

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[2] The 2014 EIA LNG Export Study, published on Oct. 29, 2014, is available at: *https://www.eia.gov/analysis/requests/fe/.*

[3] The 2015 LNG Export Study, dated Oct. 29, 2015, is available at: *http://energy.gov/sites/prod/files/2015/12/f27/20151113_macro_impact_of_lng_exports_0.pdf.*

http://www.fe.doe.gov/programs/gasregulation/index.html.

Issued in Washington, DC, on May 13, 2016.

John A. Anderson,

Director, Office of Regulation and International Engagement, Office of Oil and Natural Gas.

[FR Doc. 2016–11812 Filed 5–18–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. PP–420]

Application for Presidential Permit; Nogales Interconnection Project

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Nogales Transmission, L.L.C., (Nogales Transmission) has applied for a Presidential permit to construct, operate, maintain, and connect an electric transmission line across the United States border with Mexico.

DATES: Comments or motions to intervene must be submitted on or before June 20, 2016.

ADDRESSES: Comments or motions to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) at 202–586–5260 or via electronic mail at *Christopher.Lawrence@hq.doe.gov*, Rishi Garg (Program Attorney) at 202–586–0258.

SUPPLEMENTARY INFORMATION: The construction, operation, maintenance, and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038.

On April 8, 2016, Nogales Transmission filed an application with the Office of Electricity Delivery and Energy Reliability of the Department of Energy (DOE) for a Presidential permit. Nogales Transmission has it principal place of business in Dallas, Texas. Nogales Transmission is owned by Hunt Power, L.P., a Delaware limited partnership (Hunt Power), which in turn is a subsidiary of Hunt Consolidated, Inc.

Nogales Transmission proposes to construct and operate the Nogales Interconnection Project (the Project), an approximately five mile long overhead transmission system originating at the Valencia Substation in Nogales, Arizona, connecting to the proposed Gateway Substation three miles to the West and then crossing the U.S. border two miles to the south of the Gateway Substation. The proposed project facilities would be capable of transmitting up to 300 megawatts (MW) of power.

The U.S. portion of the proposed project would cross the U.S.-Mexico border west of the Mariposa Point of Entry. From the Valencia Substation to the Gateway Substation, a three mile, 138 kV line would be constructed. A 300 MW bi-directional Back-to-Back HVDC Converter will be located at the Gateway substation, connecting the WECC system to the Mexico system. The Back-to-Back HVDC Converter will have two phases with each phase capable of 150 MW of bi-directional flow between the WECC and Mexico systems. From the Gateway Substation to the border, a 230 kV line would run approximately two miles to the Mexico border.

The Project will be operated in accordance with the established engineering and technical criteria of the Western Electric Coordinating Council. System impact studies are being conducted to analyze the effect of importing and exporting the entire 300 MWs across the Back-to-Back HVDC system.

Since the restructuring of the electric industry began, resulting in the introduction of different types of competitive entities into the marketplace, DOE has consistently expressed its policy that cross-border trade in electric energy should be subject to the same principles of comparable open access and non-discrimination that apply to transmission in interstate commerce. DOE has stated that policy in export authorizations granted to entities requesting authority to export over international transmission facilities. Specifically, DOE expects transmitting utilities owning border facilities to provide access across the border in accordance with the principles of comparable open access and non-discrimination contained in the Federal Power Act and articulated in Federal Energy Regulatory Commission (FERC) Order No. 888 (Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; FERC Stats. & Regs. ¶31,036 (1996)), as amended.

Procedural Matters: Any person may comment on this application by filing such comment at the address provided above. Any person seeking to become a party to this proceeding must file a motion to intervene at the address provided above in accordance with Rule 214 of FERC's Rules of Practice and Procedure (18 CFR 385.214). Two copies of each comment or motion to intervene should be filed with DOE on or before the date listed above.

Additional copies of such motions to intervene also should be filed directly with: Enrique Marroquin, Nogales Transmission, LLC, 1900 North Akard Street, Dallas, TX 75201.

Before a Presidential permit may be issued or amended, DOE must determine that the proposed action is in the public interest. In making that determination, DOE considers the environmental impacts of the proposed project pursuant to the National Environmental Policy Act of 1969, determines the project's impact on electric reliability by ascertaining whether the proposed project would adversely affect the operation of the U.S. electric power supply system under normal and contingency conditions, and any other factors that DOE may also consider relevant to the public interest. Also, DOE must obtain the concurrences of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/oe/services/electricity-policy-coordination-and-implementation/international-electricity-regulatio-2.*

Issued in Washington, DC, on May 13, 2016.

Christopher A. Lawrence,

Electricity Policy Analyst, National Electricity Delivery Division, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2016–11810 Filed 5–18–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Efficiency and Renewable Energy

State Energy Advisory Board (STEAB) Meeting

AGENCY: Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open live board meeting.

SUMMARY: This notice announces a Board meeting of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: June 14, 2016 9:00 a.m. to 5:30 p.m.; June 15, 2016 9:00 a.m. to 3:30 p.m.

ADDRESSES: Lawrence Berkeley National Laboratory, 1 Cyclotron Rd, Berkeley, CA 94720 (Exact meeting room TBD).

FOR FURTHER INFORMATION CONTACT: Michael Li, Policy Advisor, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585. Phone number 202–287–5189, and email *Michael.li@ee.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Meet with and hear from the team at the Lawrence Berkeley Laboratory to get an overview of projects based around energy efficiency and reliability. Also to see how STEAB members can be engaged in upcoming projects lab members are working on.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Monica Neukomm at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 90 days on the STEAB Web site, *http://www.energy.gov/eere/steab/state-energy-advisory-board*.

Issued at Washington, DC, on May 13, 2016.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–11913 Filed 5–18–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Extension With Changes

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy.

ACTION: Notice and request for OMB review and comment.

SUMMARY: EIA, pursuant to the Paperwork Reduction Act of 1995 and with the approval of the Office of Management and Budget, intends to extend for 3 years, with changes, the following forms:

- Form EIA–63B, "Photovoltaic Module Shipments Report,"
- Form EIA–411, "Coordinated Bulk Power Supply Program Report,"
- Form EIA–826, "Monthly Electric Utility Sales and Revenue Report with State Distributions," (discontinued form to be replaced by Form EIA–861M),
- Form EIA–860, "Annual Electric Generator Report,"
- Form EIA–860M, "Monthly Update to the Annual Electric Generator Report,"
- Form EIA–861, "Annual Electric Power Industry Report,"
- Form EIA–861S, "Annual Electric Power Industry Report (Short Form),"
- Form EIA–861M, "Monthly Electric Power Industry Report" (replaces Form EIA–826),
- Form EIA–923, "Power Plant Operations Report," and
- Form EIA–930, "Balancing Authority Operations Report."

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before July 18, 2016. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Send comments to Rebecca Peterson. To ensure receipt of the comments by the due date, email is recommended (*Electricity2017@eia.gov*). The postal mailing address is U.S. Department of Energy, U.S. Energy Information Administration, Mail Stop EI–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Ms. Peterson at the email address listed above. Alternatively, Ms. Peterson may be contacted on (202) 586–4509. The proposed forms and instructions, along with related information on this clearance package, can be viewed at *http://www.eia.gov/survey/changes/electricity/solar/*.

SUPPLEMENTARY INFORMATION: This information collection request contains the following:

(1) OMB No. 1905–0129.

(2) *Information Collection Request Title:* Form EIA–63B, "Photovoltaic Module Shipments Report."

(3) *Type of Request:* Extension, with changes, of a currently approved collection.

(4) *Purpose:* The Form EIA–63B tracks photovoltaic module manufacturing, shipments, technology types, revenue and related information. The data collected on this form appear in various EIA publications. The data are used by the U.S. Department of Energy, the Congress, other government and non-government entities, and the public to monitor the current status and trends of the photovoltaic industry and to evaluate the future of the industry.

(4a) *Proposed Changes:* EIA proposes to:

- Change the title of the survey to Form EIA–63B, "Photovoltaic Module Shipments Report."
- Change the reporting period from annual to monthly.
- Reduce the monthly frame to include only 'large' producers with the intent of capturing at least 90% of peak kilowatts shipped. Respondents reporting total shipments of at least 100,000 peak kilowatts (kWp) during the previous year will be surveyed monthly.
- Survey the entire frame of all known U.S. producers annually with a short version of the form that collects data only on Schedule 1, Contact Information, Schedule 4, Photovoltaic Module Source and Disposition, and Schedule 7, Comments.
- In Schedule 3, Industry Status, add Part E, Production Capacity for Manufacturing Photovoltaic Modules, in order to collect current and planned maximum annual production capacity

to manufacture photovoltaic modules in peak kilowatts.

- In Schedule 3, delete the words "system" and "cells" throughout the schedule and only collect data relating to "modules". The following are two examples. On Schedule 3, Part A, change "cell and/or module manufacturing" to "module manufacturing"; change "module and/or system design" to "module design."
- Change the name of Schedule 4 from "Photovoltaic Shipments Status" to "Photovoltaic Modules Source and Disposition." Collect the inventory of photovoltaic modules at the beginning of the monthly reporting period (monthly or annually, depending on if the respondent is a monthly or annual respondent) instead of collecting the inventory carried forward from the previous year.
- Delete Schedule 4, Part A, Photovoltaic Cell Data, which collected cell data pertaining to inventory, shipments, and revenue.
- Delete Schedule 4, Part B, question (e), Energy Conversion Efficiency, which collected the percent of power converted per peak kilowatt.
- Delete the portion of Schedule 6, Part B, U.S. Shipments (sales within the United States excluding sales for resale) by State, Sector and End Use, which collected data on photovoltaic module shipments by sector and by end use.

(5) *Number of Survey Respondents:* Currently the estimated number of respondents is 76. Under the new proposed framework, there would be 16 monthly respondents and 60 annual respondents.

(6) *Annual Estimated Number of Total Responses:* Under the current form, there are 76 annual responses. Under the proposed new framework, the number of responses would be 252 responses, including 192 monthly and 60 annually.

(7) *Annual Estimated Number of Burden Hours:* The current annual estimated burden is 885 hours. Under the proposed changes, the estimated burden would be reduced to 563 hours, which represents a reduction of 322 burden hours from the prior renewal of this collection. The burden reduction is the result of the change to a monthly collection (accounting for 90 percent of the data) with remaining respondents reporting annually; in addition, questions related to photovoltaic cells are being removed.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* Additional costs to respondents are not anticipated beyond costs associated with response burden hours. The information is maintained in the normal course of business. The cost of burden hours to the respondents is estimated to be $40,547 (563 burden hours times $72.02 per hour). Therefore, other than the cost of burden hours, EIA estimates that there are no additional costs for generating, maintaining and providing the information.

(1) OMB No. 1905–0129.

(2) *Information Collection Request Title:* Form EIA–411, "Coordinated Bulk Power Supply Program Report."

(3) *Type of Request:* Extension, with changes, of a currently approved collection.

(4) *Purpose:* The Form EIA–411 collects information relating to the reliability of the electric power system in the lower 48 states, including regional electricity supply and demand projections for a 10-year advance period, the characteristics and frequency of outages occurring on the Bulk Electric System, and other information on the transmission system and supporting facilities. The data are collected from the regional reliability entities by the North American Electric Reliability Corp. (NERC),[1] which then organizes and edits the information and submits the data to EIA.

(4a) *Proposed Changes:* EIA proposes to:

- Discontinue the collection of historical information associated with demand, capacity, transactions, and reserve margins in Schedule 3. EIA proposes to delete Line Numbers 2a through 2d in Schedule 3 Part A, Projected Demand and Capacity—Summer, and Part B, Projected Demand and Capacity—Winter, relating to direct control load management, interruptible load, critical peak pricing with control, and load as a capacity resource. EIA also proposes to delete Line Number 4 in Part A and Part B that collects information on Total Demand Response. EIA proposes to delete Line Number 7 in Part A and Part B that collects information on the peak hour demand plus available reserves. EIA proposes to delete Line Numbers 10a through 10c that collect information on capacity transfers relating to imports and to delete Line numbers 11a through 11c that collect information on capacity transfers relating to exports in both Part A and Part B. EIA also proposes to delete Line Number 16 that collects information on "Target Reserve Margin."
- One of the goals of collecting this historical information on Schedule 3 was to provide a context to evaluate the adequacy of planned reserve margins from prior survey submissions. However, significant differences between operational reserve margins and planned reserve margins has rendered this historical information less meaningful than originally intended. Until a more comprehensive framework for making such comparisons is identified, EIA is proposing not to collect this historical information.
- EIA currently collects the names of planned transmission line terminal locations in Schedule 6, Part B, Characteristics of Projected Transmission Line Additions. The instructions for Line 5, Terminal Location (From) and Line 6, Terminal Location (To) will now ask the respondent to report the state and county, in addition to the name of the terminal. This is a more standard way of reporting locations.

(5) *Estimated Number of Survey Respondents:* Nine respondents (the eight NERC regional entities and NERC Headquarters).

(6) *Annual Estimated Number of Total Responses:* The annual estimated number of total responses is 9.

(7) *Annual Estimated Number of Burden Hours:* The annual estimated burden is 1,098 hours, which represents no change in burden hours from the prior renewal of this collection.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* Additional costs to respondents are not anticipated beyond costs associated with response burden hours. The information is maintained in the normal course of business. The cost of burden hours to the respondents is estimated to be $79,078 (1,098 burden hours times $72.02 per hour). Therefore, other than the cost of burden hours, EIA estimates that there are no additional costs for generating, maintaining and providing the information.

(1) OMB No. 1905–0129.

(2) *Information Collection Request Title:* Form EIA–826, "Monthly Electric Sales and Revenue with State Distributions Report." See "Information Collection Request Title: Form EIA–861M, "*Monthly Electric Power Industry Report*" under **SUPPLEMENTARY INFORMATION** below.

(1) OMB No. 1905–0129.

(2) *Information Collection Request Title:* Form EIA–860, "Annual Electric Generator Report."

(3) *Type of Request:* Extension, with changes, of a currently approved collection.

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[1] NERC is the official North American Electric Reliability Corporation as designated by the Federal Energy Regulatory Commission (FERC) pursuant to the Energy Policy Act of 2005. EIA has had a long-standing relationship with NERC and its predecessor for the collection of the EIA–411 data.

(4) *Purpose:* Form EIA–860 collects data on existing and planned electric generation plants and associated equipment including generators, boilers, cooling systems, and environmental control systems. Data are collected from all existing units and from planned units scheduled for initial commercial operation within 10 years of the specified reporting period (depending on the type of plant).

(4a) *Proposed Changes:* EIA proposes to:

- Collect additional information on utility-scale electricity storage (primarily batteries). Specifically, in Schedule 2, Power Plant Data, EIA proposes to add question 15, which asks if the facility has energy storage capabilities. Currently, EIA collects the same design and operational data from energy storage applications as it does from conventional generators, despite the fundamental differences between them. The rapid growth in the number and capacity of energy storage applications along with their unique operational characteristics is an important consideration for collecting information that is relevant to the electric power markets. Based on analysis from the Sandia National Laboratory, EIA developed prospective data elements and performed cognitive testing on the ability of the industry to report this information.
- On Schedule 2, EIA proposes to add questions 16a, 16b, 16c, and 16d regarding deliveries of natural gas. If a facility has a connection to a local distribution company (LDC), question 16a asks for the name of the LDC. If the facility has a pipeline connection other than to an LDC, question 16b asks for the name(s) of the owner or operator of each pipeline that connects directly to the facility or that connects to a lateral pipeline owned by this facility. Question 16c asks if the facility has on-site storage of natural gas and, if so, question 16d asks if the facility has the capability to store the natural gas in the form of liquefied natural gas. The increasing reliance on natural gas as an energy source for electricity requires a better understanding of how natural gas is distributed to electric generation facilities and if storage is possible.
- In Schedule 3, Part B, add question 22, in order to collect the "Reference Unit Power" (RUP) value for each nuclear generator as of December 31 of the data collection year. The International Atomic Energy Agency (IAEA) requested that EIA provide this information. EIA has primary responsibility to provide U.S. data to the IAEA. The IAEA needs the RUP for U.S. reactors as it does from its other IAEA member countries. Currently, EIA does not collect RUP. EIA proposes to add a question to collect information on RUP to improve the accuracy of its estimates of RUP, and to improve the United States' data submissions to the IAEA.
- In Schedule 3, Part B, Generator Information—Operable Generators, EIA proposes to remove question 23 that asks for the minimum amount of time needed to bring a generator from a non-spinning reserve status to full load. This has been unduly burdensome to collect, both on the respondents and on EIA processing staff.
- In Schedule 3, Part B, also remove question 29, which asks for the Federal Aviation Administration (FAA) Obstacle Number assigned to the turbines. This also has been burdensome to collect.
- In Schedule 3, Part B, EIA proposed to add question 30a and 30b, which asks solar PV generators having fixed tilt technologies or single-axis technologies for their fixed azimuth angles and fixed tilt angles. This will allow hourly timing of electric supply to be better understood.
- In Schedule 3, Part B, EIA proposed to add new questions 32 and 33, which asks all solar facilities if they have net metering agreements or virtual net metering agreements in place associated with their solar generation. These questions also ask facilities with net metering or virtual net metering agreements the capacity associated with these agreements. This expansion will enhance EIA's estimation of total distributed solar generation in the United States.
- In Schedule 6, Part B, Boiler Information—Air Emission Standards and Control Strategies, plants with a total steam-electric nameplate capacity of at least *10* MW report their applicable nitrogen oxides (NO_X) and mercury regulations and their existing and proposed strategies for meeting these regulations; plants with a total steam-electric nameplate capacity of at least *100* MW report their applicable sulfur dioxide (SO_2) regulations and their existing and proposed strategies for meeting these regulations. EIA proposes standardizing reporting by having plants with a total steam-electric nameplate capacity between 10 and 100 MW also report their applicable SO_2 regulations and their existing and proposed strategies for meeting these regulations. This expansion will enhance EIA's estimation of SO_2 emissions by electrical power plants.
- In Schedule 6, Part A, Boiler Information—Plant Configuration and Equipment Information, question 2, EIA proposes to collect the actual and planned retirement dates of environmental equipment at electrical power plants. This expansion will allow EIA to provide a more comprehensive inventory of environmental equipment.

(5) *Estimated Number of Survey Respondents:* There are approximately 4,700 respondents.

(6) *Annual Estimated Number of Total Responses:* The annual estimated number of total responses is approximately 4,700.

(7) *Annual Estimated Number of Burden Hours:* The annual estimated burden is 43,883 hours, which represents an increase of 12,789 burden hours from the prior renewal of this collection. The change in burden is the result of a 42-percent increase in the number of respondents due to industry developments as well as the addition of questions concerning storage capacity, solar generators, and several other areas.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* Additional costs to respondents are not anticipated beyond costs associated with response burden hours. The information is maintained in the normal course of business. The cost of burden hours to the respondents is estimated to be $3,160,454 (43,883 burden hours times $72.02 per hour). Therefore, other than the cost of burden hours, EIA estimates that there are no additional costs for generating, maintaining and providing the information.

(1) OMB No. 1905–0129.

(2) *Information Collection Request Title:* Form EIA–860M, "Monthly Update to the Annual Electric Generator Report"

(3) *Type of Request:* Extension, with changes, of a currently approved collection.

(4) *Purpose:* Form EIA–860M collects data on the status of proposed new generators scheduled to begin commercial operation within the forward 12-month period; existing generators scheduled to retire from service within the forward 12-month period; and existing generators that have proposed modifications that are scheduled for completion within one month. The information is needed to ensure a complete and accurate inventory of the nation's generating fleet, for such purposes as reliability and environmental analyses.

(4a) *Proposed Change:*

- EIA proposes adding questions 3a through 3d to the end of Schedule 2, Updates to Proposed New Generators:
  - ○ Questions 3a and 3b ask for each newly operational solar generators if the output from the generator is part of a net metering agreement and, if so, how much direct current (DC) capacity (in

MW) is part of the net metering agreement.

○ Questions 3c and 3d ask for each newly operational solar generators if the output from the generator is part of a virtual net metering agreement and, if so, how much DC capacity (in MW) is part of the virtual net metering agreement.

The distinction between net metering and virtual net metering is specified in the proposed instructions to the form. Responses to these proposed questions would enhance EIA's estimation of distributed solar generation in the United States.

(5) *Estimated Number of Survey Respondents:* During a typical year approximately 478 entities will file the form for at least one month. However, in any given month only about 200 entities fall within the reporting threshold (*i.e.,* have a new generator that is within 12 months of entering commercial operation) and are therefore required to file the survey. Most respondents file fewer than 12 forms a year; the average for 2015 was 5.6 filings per year per respondent. Based on this historical reporting trend, the burden estimates are sufficient based on a 12 month reporting cycle.

(6) *Annual Estimated Number of Total Responses:* The annual estimated number of total responses is 2,677.

(7) *Annual Estimated Number of Burden Hours:* The annual estimated burden is 830 hours, which represents an increase of 138 burden hours from the prior renewal of this collection. The increase in burden is due to a 16-percent increase in the number of respondents who previously filed an EIA–860M as well as the addition of questions regarding net metering agreements involving newly operable solar generators.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* Additional costs to respondents are not anticipated beyond costs associated with response burden hours. The information is maintained in the normal course of business. The cost of burden hours to the respondents is estimated to be $59,777 (830 burden hours times $72.02 per hour). Therefore, other than the cost of burden hours, EIA estimates that there are no additional costs for generating, maintaining and providing the information.

(1) OMB No.: 1905–0129.

(2) *Information Collection Request Title:* Form EIA–861, "Annual Electric Power Industry Report."

(3) *Type of Request:* Extension, with changes, of a currently approved collection.

(4) *Purpose:* Form EIA–861 collects annual information on the retail sale, distribution, transmission and generation of electric energy in the United States and its territories. The data include related activities such as energy efficiency and demand response programs. In combination with the Form EIA–861S short form (see below) and the monthly Form EIA–861M, this annual survey provides coverage of sales to ultimate customers of electric power and related activities.

(4a) *Proposed Changes:* EIA proposes to:

- In Schedule 1, Identification, under the Respondent Type section, a new respondent type entitled "Behind the Meter" will be added. This respondent type would be for entities that own/operate renewable energy generating facilities behind the utility meter that generate power intended for on-site use in a home, office building, or other commercial facility.
- Add a question to Schedule 6, Part A, Energy Efficiency, which asks a respondent, in the event that they use a Demand Side Management (DSM) Administrator to report on the respondent's DSM programs, to select that DSM Administrator from a dropdown menu. Also, for DSM Administrators respondents, move the location of where the DSM Administrators list what utilities they are providing services for (currently in Schedule 9, Footnotes) to Schedule 6, Part A.
- In Schedule 7, Part A, Net Metering Programs, add a question asking for the capacity of small-scale storage associated with net-metered distributed capacity. Also in Schedule 7, Part B, Non Net-Metered Distributed Generators add a question on the capacity of small-scale storage associated with non-net-metered distributed capacity. EIA has received a number of requests to collect these data.
- In Schedule 7, Part A, Net Metering Programs, add a question asking for the virtual net- metered capacity and virtual net-metered customer counts of net metering programs. This question would apply both to resources less than 1 MW and resources in excess of 1 MW. One of the emerging developments in the solar PV market place are community solar projects combined with virtual net-metering agreements utilities have with the customers. Virtual net metering arrangements allow generation from remotely sited generators to offset customers' monthly consumption and results in a net bill to the customer. In order to accurately account for this generation, EIA needs to expand the net metering data collection to include these situations.
- Change title of Schedule 7, Part B from "Distributed and Dispersed Generation" to "Non-net Metered Distributed Generators."
- Eliminate all questions in Schedule 7B, Distributed and Dispersed Generation, regarding dispersed generation. Dispersed generators are commercial and industrial generators not connected/synchronized to the grid. Dispersed generation questions eliminated will include number of generators, capacity, and technology type. The amount of dispersed generation capacity reported is small and the ability of utilities to accurately report this information is unclear, since this capacity is not connected to utility grids. In addition, the terms distributed generation and dispersed generation have been a source of confusion with respondents and data users.
- Add end-use sectors to Schedule 7, Part B, Distributed and Dispersed Generation, in place of an aggregated total. Also add an additional technology (fuel cells) to Schedule 7, Part B.
- In the Form EIA–861 instructions, examples of required respondents was expanded for clarification to include transmission owners, transmission operators, and Third Party Owners of solar PV (TPO). This is being done to more explicitly clarify the types of electric power industry entities required to submit Form EIA–861.

(5) *Estimated Number of Survey Respondents:* There are approximately 2,300 respondents.

(6) *Annual Estimated Number of Total Responses:* The annual estimated number of total responses is 2,295.

(7) *Annual Estimated Number of Burden Hours:* The total annual estimated burden is 29,261 hours, which represents an increase of 5,138 burden hours from the prior renewal of this collection. The change in burden is primarily due to the addition of questions regarding, among other things, small-scale storage and virtual net metered capacity.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* Additional costs to respondents are not anticipated beyond costs associated with response burden hours. The information is maintained in the normal course of business. The cost of burden hours to the respondents is estimated to be $2,107,377 (29,261 burden hours times $72.02 per hour). Therefore, other than the cost of burden hours, EIA estimates that there are no additional costs for generating, maintaining and providing the information.

(1) OMB No. 1905–0129.

(2) *Information Collection Request Title:* Form EIA–861M, "Monthly Electric Power Industry Report" (replaces Form EIA–826). See "Information Collection Request Title: Form EIA–826, *Monthly Electric Sales and Revenue with State Distributions Report*" under **SUPPLEMENTARY INFORMATION** above.

(3) *Type of Request:* New Collection.

(4) *Purpose:* Form EIA–861M will collect monthly information from a sample of electric utilities, energy service providers, and distribution companies that sell or deliver electric power to end users. Data collected on this form includes sales and revenue for all end-use sectors (residential, commercial, industrial, and transportation). This survey is the monthly complement to the annual data collection from the universe of respondents made by the short and long form versions of the Form EIA–861 survey (see further below).

(4a) *Proposed Changes:* EIA proposes to:

- Discontinue Form EIA–826 and replace it with new Form EIA–861M, "Monthly Electric Power Industry Report." Data collected on the discontinued Form EIA–826 will be collected on the EIA–861M with the following changes.
- In Schedule 1, Identification, under the Respondent Type section, the respondent types for State and Municipal will be combined into one category titled "State—Municipal." A new respondent type, "Behind the Meter," will be added. This respondent type would be for entities that own/operate renewable energy generating facilities behind the utility meter that generate power intended for on-site use in a home, office building, or other commercial facility.
- EIA proposes to add a new part, Schedule 3, Part A, Net Metering Programs, which will collect data regarding net-metering programs, including capacity, installations, storage capacity, customers, and, if available, energy sold back to the utility. These data will be reported by state, balancing authority, customer class, and technology (photovoltaic, wind and other).
- EIA also proposes on the new Schedule 3, Part A, Net Metering Programs, to add virtual net metered capacity and customer counts both from resources less than 1 Megawatt (MW) and resources 1 MW or greater. Emerging developments in the solar PV market place include community solar projects that are combined with "virtual net metering" agreements between utilities and end-use customers. Virtual net metering arrangements allow generation from remotely sited generators to offset customers' monthly consumption and results in a net bill to the customer. In order to accurately account for this generation, EIA needs to expand the net metering data collection to include these situations.
- EIA proposes to delete the current Schedule 3, Part B, Net Metering, whose current data elements and additional data elements will be collected on the new proposed Schedule 3, Part A, Net Metering Programs. In place of the previous Part B, EIA will add a new Schedule 3, Part B, Non Net-Metered Distributed Generators, which will collect the number and capacity of non-net-metered distributed generators by technology and sector. The addition of these data will improve EIA's ability to make monthly estimates of generation from solar photovoltaic (PV) resources.
- EIA proposes on both Schedule 3, Part A (Net Metering Programs) and Part B (Non Net-Metered Distributed Generators), to collect the capacity of small-scale storage associated with net metered and non-net metered distributed capacity. EIA has received an increasing number of requests to collect these data.
- EIA proposes to eliminate Schedule 3, Part C, Advanced Metering, relating to advanced utility meters. These data will no longer be collected on a monthly basis. These data were changing rapidly in previous years as utilities were participating in American Reinvestment and Recovery Act (ARRA) projects. Currently the data are not moving rapidly year-over-year and EIA expects a further year-over-year decline in future years. This eliminates the need to look at it monthly. These data will continue to be collected annually on Form EIA–861.

(5) *Estimated Number of Survey Respondents:* There are approximately 620 respondents.

(6) *Annual Estimated Number of Total Responses:* The annual estimated number of total responses is 7,440.

(7) *Annual Estimated Number of Burden Hours:* The annual estimated burden is 15,178 hours, which represents an increase of 6,415 burden hours from the prior renewal of this collection. The increase in burden is due to growth in the number of respondents due to industry developments and the addition of questions regarding capacity.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* Additional costs to respondents are not anticipated beyond costs associated with response burden hours. The information is maintained in the normal course of business. The cost of burden hours to the respondents is estimated to be $1,093,120 (15,178 burden hours times $72.02 per hour). Therefore, other than the cost of burden hours, EIA estimates that there are no additional costs for generating, maintaining and providing the information.

(1)OMB No. 1905–0129.

(2) *Information Collection Request Title:* Form EIA–861S, "Annual Electric Power Industry Report (Short Form)."

(3) *Type of Request:* Extension, with changes, of a currently approved collection.

(4) *Purpose:* Form EIA–861S collects a limited set of information annually from 1,100 small companies involved in the retail sale of electricity. A complete set of annual data are collected from 2,300 larger companies on the Form EIA–861(long form) and monthly data are collected on the Form EIA–861M (see above). The smaller utilities that currently report on the EIA–861S are required to complete the EIA–861 (long form) once every five years to provide updated information for the statistical estimation of uncollected data.

(4a) *Proposed Change:*

- EIA plans to extend the time interval in which small utilities on the EIA–861S (short form) must complete the EIA–861 (long form) from 5 years to 8 years. EIA has conducted a statistical analysis of this proposal and the results indicate that the reporting interval can be extended to 8 years without adversely affecting the statistical estimation of uncollected data, *i.e.*, sector level (residential, commercial, industrial, and transportation) sales, revenue, and customer count by state. The change will also reduce burden on smaller utilities.

(5) *Estimated Number of Survey Respondents:* There are approximately 1,100 respondents.

(6) *Annual Estimated Number of Total Responses:* The annual estimated number of total responses is 1,100.

(7) *Annual Estimated Number of Burden Hours:* The annual estimated burden is 833 hours, which represents a reduction of 3 burden hours from the prior renewal of this collection.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* Additional costs to respondents are not anticipated beyond costs associated with response burden hours. The information is maintained in the normal course of business. The cost of burden hours to the respondents is estimated to be $59,993 (833 burden hours times $72.02 per hour). Therefore, other than the cost of burden hours, EIA estimates that there are no additional costs for

generating, maintaining and providing the information.

(1) OMB No. 1905–0129.

(2) *Information Collection Request Title:* Form EIA–923, "Power Plant Operations Report."

(3) *Type of Request:* Extension, with changes, of a currently approved collection.

(4) *Purpose:* Form EIA–923 collects information from electric power plants in the United States. Data collected include electric power generation, energy source consumption, end of reporting period fossil fuel stocks, as well as the quality and cost of fossil fuel receipts.

(4a) *Proposed Changes:* EIA proposes to:

- On Schedule 2, Cost and Quality of Fuel Purchases—Plant Level, Part A, Contract Information, Purchases and Cost, and Part B, Quality of Fuel and Transportation, change the way natural gas receipts are collected. Currently this information is collected by supplier and individual contract. EIA proposes to collect receipts data by pipeline for all individual pipelines servicing a plant. In the case of Part A, respondents would break down their costs into total delivered costs excluding fixed charges, and pipeline capacity reservation and other fixed charges. The object of this change is to collect more useful information and to reduce the reporting burden.
- On Schedule 4, Part A, Fossil Fuel Stocks at the End of the Reporting Period for Coal, Petroleum Coke, Distillate Fuel Oil, and Residual Fuel Oil, remove the data protection for coal and petroleum stocks held at power plants and related facilities. Plant-level stocks data would be publicly released (as is other plant-specific data, such as generation) seven weeks after the end of the reporting month. The passage of time during the seven week time period between collection and publication limits any competitive harm that would result from releasing the data, and its release will provide more detailed market information to policy-makers and industry analysts.
- On Schedule 4, Part A, Fossil Fuel Stocks at the End of the Reporting Period for Coal, Petroleum Coke, Distillate Fuel Oil, and Residual Fuel Oil, institute the same reporting thresholds, generator nameplate capacity with a primary fuel of coal greater than 50 MW or total generator nameplate capacity with a primary fuel of any combination of natural gas, residual fuel oil, distillate fuel oil, or petroleum coke greater than 200 MW, as on Schedule 2, Costs and Quality of Fuel Purchases—Plant Level. This change will make the fuel receipts data (Schedule 2) and stock data (Schedule 4) consistent with each other and create a single respondent pool for the two schedules. The number of plants reporting on Schedule 4, Part A will be reduced. The change will also increase the quality of fuel stocks data collected on Schedule 4, Part A because the fuel stocks data that is reported by plants falling under the Schedule 2 threshold tends to be difficult to quality check. Also to achieve consistency across schedules, kerosene and jet fuel stocks will no longer be collected on Schedule 4.
- On Schedule 8, Part D, Monthly Cooling System Information, collect the cooling system information data on a monthly rather than an annual basis. The survey currently collects 12 months of cooling water operating data once a year. Under this proposal, monthly respondents would provide cooling system information data monthly, rather than providing 12 months of cooling data on the 923 supplemental form. The change is not expected to affect reporting burden.
- Additionally, EIA plans to reduce the current monthly sample via a more efficient model-based cutoff design. It will significantly reduce the number of monthly respondents (from 2,108 respondents to 1,323) while maintaining the ability to effectively estimate data for out-of-sample power plants, *i.e.* power plants that only report data on an annual basis. This will also reduce the number of supplemental respondents from 1,632 to 1,056. The new sample design is expected to lower the overall burden and still produce aggregate statistics that meet EIA publication standards.
- EIA also proposes to collect data from plants whose operating status is TS, "operating under test conditions (not in commercial service)" if those plants are in fact collecting revenues from the sale of electricity. This change would allow EIA get more complete data on U.S. generation and sales.

(5) *Estimated Number of Survey Respondents:* There are approximately 7,328 respondents. The monthly form is filed by 1,323 respondents; the annual form is filed by 6,005 respondents; and the supplemental form is filed by 1,056 respondents. (Those same 1,056 supplemental respondents also file the monthly form and are included in the 1,323 respondents on the monthly form).

(6) *Annual Estimated Number of Total Responses:* The annual estimated number of total responses is 22,937.

(7) *Annual Estimated Number of Burden Hours:* The annual estimated burden is 55,283 hours, which represents a reduction of 16,029 burden hours from the prior renewal of this collection. The change in burden is primarily due to the removal of questions related to cooling water and frame modification resulting in fewer respondents.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* Additional costs to respondents are not anticipated beyond costs associated with response burden hours. The information is maintained in the normal course of business. The cost of burden hours to the respondents is estimated to be $3,981,482 (55,283 burden hours times $72.02 per hour. Therefore, other than the cost of burden hours, EIA estimates that there are no additional costs for generating, maintaining and providing the information.

(1) *OMB No.* 1905–0129.

(2) *Information Collection Request Title:* Form EIA–930, "Balancing Authority Operations Report"

(3) *Type of Request:* Extension, with changes, of a currently approved collection.

(4) *Purpose:* Form EIA–930 collects hourly electric power operating data from Balancing Authorities in the contiguous United States.[2] The data include:

- Hourly demand
- Hourly next-day demand forecast
- Hourly net generation
- Hourly actual interchange with each interconnected Balancing Authority

The purpose of this survey is to enable EIA to make available a comprehensive set of the current day's system demand data on an hourly basis and the prior day's basic hourly electric system operating data on a daily basis. Besides providing a basic measure of the current status of electric systems and the United States electric industry as a whole, the data can be used to compare actual system demand with the day-ahead forecast thereby providing a measure of the accuracy of the forecasting used to commit resources. In addition, the EIA–930 data are key in addressing smart grid related issues such as integrating wind and solar generation, improving the coordination of natural gas and electric short-term operations, and expanding the use of demand response, storage, and electric vehicles in electric system operations.

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[2] A Balancing Authority is "The responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports Interconnection frequency in real time." (NERC, *Glossary of Terms Used in NERC Reliability Standards,* December 21, 2012.) In most, but not all cases, a balancing authority is an electric utility company or a Regional Transmission Organization

(4a) *Proposed Changes: EIA proposes to:*

- Change the amount of time within which the respondents must report. Currently respondents must submit their data within 60 minutes of the end of the data hour. The proposal is to change that to within 30 minutes of the end of the data hour. This change would be consistent with the observed reporting capabilities of the respondents.
- Require respondents to report hourly sub-regional actual demand when these values are produced in the normal course of business within a month of the operating day.
- Require respondents to report hourly net generation by standard fuel type categories.

Also, EIA requests comments on whether it should continue its current policy of limited withholding of small Balancing Authority data for two days.

(5) *Estimated Number of Survey Respondents:* The annual estimated number of respondents is 66.

(6) *Annual Estimated Number of Total Responses:* The annual estimated number of total responses is 24,090.

(7) *Annual Estimated Number of Burden Hours:* The annual estimated burden is 3,960 hours, which represents an increase of 1,618 burden hours from the prior renewal of this collection. The increase in burden is due to the expansion of the form to collect net generation by standard fuel type.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* Additional costs to respondents are not anticipated beyond costs associated with response burden. The information is maintained in the normal course of business. The cost of burden hours to the respondents is estimated to be $285,199 (3,960 burden hours times $72.02 per hour). Therefore, other than the cost of burden hours, EIA estimates that there are no additional costs for generating, maintaining and providing the information.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC, on May 12, 2016.

Nanda Srinivasan,

Director, Office of Survey Development and Statistical Integration, U.S. Energy Information Administration.

[FR Doc. 2016–11911 Filed 5–18–16; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 9946–65–OGC]

Intent To Grant a Co-Exclusive Patent License

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to grant a co-exclusive license; request for public comment.

SUMMARY: Pursuant to 35 U.S.C. 207 (Patents) and 37 CFR part 404 (U.S. Government patent licensing regulations), EPA hereby gives notice of its intent to grant an exclusive, royalty-bearing, revocable license to practice the invention described and claimed in the U.S. patent number 7,279,103 entitled, PROCESS FOR THE PURIFICATION OF ACIDIC METAL-BEARING WASTE WATERS TO PERMISSABLE DISCHARGE LEVELS WITH RECOVERY OF MARKETABLE METAL PRODUCTS, filed September 13, 2005 and issued October 9, 2007, to PRD Tech, Incorporated, Cincinnati, Ohio.

The proposed exclusive license will contain appropriate terms, limitations, and conditions to be negotiated in accordance with 35 U.S.C. 209 and 37 CFR 404.5 and 404.7 of the U.S. Government patent licensing regulations.

EPA will negotiate the final terms and conditions and grant the exclusive license, unless within 30 days from the date of this notice EPA receives, at the address below, written objections to the grant, together with supporting documentation. The documentation from objecting parties having an interest in practicing the above patent should include an application for an exclusive or nonexclusive license with the information set forth in 37 CFR 404.8.

The EPA Patent Attorney and other EPA officials will review all written responses and then make recommendations on a final decision to the Director or Deputy Director of the National Risk Management Research Laboratory who have been delegated the authority to issue patent licenses under EPA Delegation 1–55.

DATES: Comments must be received by June 20, 2016.

ADDRESSES: Submit your comments to Laura Scalise, Patent Attorney, Office of General Counsel (Mail Code 2377A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–8303; email address: *scalise.laura@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Laura Scalise, Patent Attorney, Office of General Counsel (Mail Code 2377A), Environmental Protection Agency, Washington, DC 20460, telephone (202) 564–8303.

Dated: May 6, 2016.

Wendy Blake,

Associate General Counsel, General Law Office.

[FR Doc. 2016–11841 Filed 5–18–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0120; FRL–9946–64–OAR]

Proposed Information Collection Request; Comment Request; National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), "National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings" (EPA ICR No. 1765.08, OMB Control No. 2060–0353) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through November 30, 2016. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before July 18, 2016.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2003–0120, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

The EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Ms. Kim Teal, Office of Air and Radiation, Office of Air Quality Planning and Standards, Mail Code D243–04, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5580; fax number: (919) 541–5450; email address: *teal.kim@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center (EPA/DC), EPA WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The EPA is required under section 183(e) of the Clean Air Act to regulate volatile organic compound emissions from the use of consumer and commercial products. Pursuant to section 183(e)(3), the EPA published a list of consumer and commercial products and a schedule for their regulation (60 FR 15264). Automobile refinish coatings were included on the list, and the standards for such coatings are codified at 40 CFR part 59, subpart B. The reports required under the standards enable the EPA to identify all coating and coating component manufacturers and importers in the United States and to determine which coatings and coating components are subject to the standards, based on dates of manufacture.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action as respondents are manufacturers and importers of automobile refinish coatings and coating components. Manufacturers of automobile refinish coatings and coating components fall within standard industrial classification (SIC) 2851, "Paints, Varnishes, Lacquers, Enamels, and Allied Products," and North American Industry Classification System (NAICS) code 325510, "Paint and Coating Manufacturing." Importers of automobile refinish coatings and coating components fall within SIC 5198, "Wholesale Trade: Paints, Varnishes, and Supplies," NAICS code 422950, "Paint, Varnish and Supplies Wholesalers," and NAICS code 444120, "Paint and Wallpaper Stores."

Respondent's obligation to respond: Mandatory, 40 CFR part 59, subpart B.

Estimated number of respondents: 4 (total).

Frequency of response: On occasion.

Total estimated burden: 14 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $924 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in Estimates: There is no increase in hours in the total estimated respondent burden compared with the ICR currently approved by OMB.

Dated: May 11, 2016.

Frederick J. Thompson,

Acting Director, Sector Policies and Programs Division, Office of Air Quality Planning and Standards.

[FR Doc. 2016–11839 Filed 5–18–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0643; FRL–9946–04–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Pressure Sensitive Tape and Label Surface Coating Operations (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NSPS for Pressure Sensitive Tape and Label Surface Coating Operations (40 CFR part 60, subpart RR) (Renewal)" (EPA ICR No. 0658.12, OMB Control No. 2060–0004), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through May 31, 2016. Public comments were previously requested via the **Federal Register** (80 FR 32116) on June 5, 2015 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before June 20, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0643, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed either online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 60, subpart RR. Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Form Numbers: None.

Respondents/affected entities: Pressure sensitive tape and label surface coating facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart RR).

Estimated number of respondents: 42 (total).

Frequency of response: Initially, quarterly and semiannually.

Total estimated burden: 3,970 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $482,000 (per year), includes $82,600 in both annualized capital/startup and operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in burden from the previous ICR, including increases in the respondent labor hours, O&M cost, and number of responses. This is due to an increase in the estimated number of sources subject to the standard. In this ICR, we assume the industry continues to grow at a rate of one new source per year. Additionally, there is a small change in the assumption where we assume all existing sources will need to re-familiarize with the regulatory requirements each year. This change in assumption also contributes to the increase in respondent labor hours.

Courtney Kerwin,

Acting-Director, Collection Strategies Division.

[FR Doc. 2016–11766 Filed 5–18–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPA–2007–0584; FRL–9946–46–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Spill Prevention, Control, and Countermeasure (SPCC) Plans (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "Spill Prevention, Control, and Countermeasure (SPCC) Plans (Renewal)" (EPA ICR No. 0328.17, OMB Control No. 2050–0021) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through May 31, 2016. Public comments were previously requested via the **Federal Register** (81 FR 1625) on January 13, 2016, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before June 20, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OPA–2007–0584, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *superfund.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Alan Tarrab, Regulations Implementation Division, Office of Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–564–0206; email address: *tarrab.alan@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The authority for EPA's oil pollution prevention requirements is derived from section 311(j)(1)(C) of the Clean Water Act, as amended by the Oil Pollution Act of 1990. EPA's regulation is codified at 40 CFR part 112. An SPCC Plan will help an owner or operator identify the necessary procedures, equipment, and resources to prevent an oil spill and to respond to an oil spill in a timely manner. If implemented effectively, the SPCC Plan is expected to prevent oil spills and reduce the impact and severity of oil spills. Although the owner or operator is the primary data user, EPA may also require the owner or operator to submit data to the Agency in certain situations to ensure facilities comply with the SPCC regulation and to help allocate response resources. State and local governments may use the data, which are not generally available elsewhere and can assist local emergency preparedness planning efforts. EPA does not require an owner or operator to submit SPCC Plans, but may request the SPCC Plan during a facility inspection or an oil spill incident for review. The SPCC regulation requires the owner or operator maintain a complete copy of the Plan at the facility if the facility is normally attended at least four hours per day or at the nearest field office if the facility is not so attended. The rule also requires that the Plan be available to the Regional Administrator for on-site review during normal working hours (40 CFR 112.3(e)). The supporting statement further explains SPCC Plan Preparation, Certification, and Maintenance, as well as Recordkeeping requirements.

Form Numbers: None.

Respondents/affected entities: Private and state owners or operators of regulated facilities.

Respondent's obligation to respond: Mandatory, pursuant to 40 CFR 112.3(e).

Estimated number of respondents: 542,100 (total).

Frequency of response: Once.

Total estimated burden: 6,180,110 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $797,257,493 (per year), includes $183,160,295 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 2,618,818 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is primarily due to change in industry sizes, assumptions regarding the methodology for reviewing and revising Tier I facility plans, and exemption of certain farms under section 1049 of the Water Resources Reform and Development Act of 2014.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2016–11765 Filed 5–18–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0355; FRL–9946–24–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Clay Ceramics Manufacturing, Glass Manufacturing, and Secondary Nonferrous Metals Processing Area Sources (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NESHAP for Clay Ceramics Manufacturing, Glass Manufacturing, and Secondary Nonferrous Metals Processing Area Sources (40 CFR part 63, subpart RRRRRR, SSSSSS and TTTTTT) (Renewal)" (EPA ICR No. 2274.05, OMB Control No. 2060–0606), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through May 31, 2016. Public comments were previously requested via the **Federal Register** (80 FR 32116) on June 5, 2015 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before June 20, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0355, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov*. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; email address: *yellin.patrick@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets*.

Abstract: Owners and operators of affected facilities are required to comply with reporting and record keeping requirements for the general provisions of 40 CFR part 63, subpart A, as well as for the specific requirements at 40 CFR part 63, subparts RRRRRR, SSSSSS, and TTTTTT. This includes submitting initial notification reports, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with these standards.

Form Numbers: None.

Respondents/affected entities: Clay ceramics manufacturing, glass manufacturing, and secondary nonferrous metals processing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subparts RRRRRR, SSSSSS and TTTTTT).

Estimated number of respondents: 82 (total).

Frequency of response: Initially.

Total estimated burden: 1,810 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $197,000 (per year), which includes $9,850 in either annualized capital/startup or operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in respondent labor hours and costs in this ICR from the most recently approved ICR. This is not due to any program changes. The increase occurred because this ICR assumes all existing respondents will take some time each year to re-familiarize with the regulatory requirements. Additionally, there is a small decrease of $4 in the estimated O&M cost due to rounding. This ICR rounds all calculated burden and costs to three significant digits. There is no change in the methodology or assumptions used to calculate the O&M cost.

Courtney Kerwin,

Acting-Director, Collection Strategies Division.

[FR Doc. 2016–11768 Filed 5–18–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0688; FRL–9946–15–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Plastic Parts and Products Surface Coating (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NESHAP for Plastic Parts and Products Surface Coating (40 CFR part 63, subpart PPPP) (Renewal)" (EPA ICR No. 2044.06, OMB Control No. 2060–0537), to the Office of

Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through May 31, 2016. Public comments were previously requested via the **Federal Register** (80 FR 32116) on June 5, 2015 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before June 20, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0688, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, subpart PPPP. Owners or operators of the affected facilities must submit initial notification reports, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Form Numbers: None.

Respondents/affected entities: Facilities that perform surface coating of plastic parts and products.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart PPPP).

Estimated number of respondents: 835 (total).

Frequency of response: Initially, occasionally and semiannually.

Total estimated burden: 324,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $32,800,000 (per year), which includes $267,000 in both annualized capital/startup and operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in burden from the most recently approved ICR. This is not due to program changes; rather, the increase occurred because we assume the industry has grown, and will continue to grow, at a rate of one new source per year. This increase in the estimated number of sources results in increases in the respondent labor hours, total O&M costs, and number of responses.

Courtney Kerwin,

Acting-Director, Collection Strategies Division.

[FR Doc. 2016–11767 Filed 5–18–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9946–54–ORD]

Stormwater Management in Response to Climate Change Impacts: Lessons From the Chesapeake Bay and Great Lakes Regions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency is announcing the availability of the document titled, "Stormwater Management in Response to Climate Change Impacts: Lessons from the Chesapeake Bay and Great Lakes Regions" (EPA/600/R–15/087). The document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development. This document describes insights gained from a series of EPA and National Oceanic and Atmospheric Administration (NOAA) sponsored workshops with communities in the Chesapeake Bay and Great Lakes regions to address climate change in stormwater adaptation efforts.

The final document is available via the Internet on EPA's Risk Web page under Recent Announcements at *http://www.epa.gov/risk.*

DATES: The document will be available on or around May 19, 2016.

ADDRESSES: The final document, "Stormwater Management in Response to Climate Change Impacts: Lessons from the Chesapeake Bay and Great Lakes Regions," is available primarily via the Internet on the EPA's Risk Web page under Recent Announcements at *http://www.epa.gov/risk.* A limited number of paper copies are available from the Information Management Team, NCEA; telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, mailing address, and the document title.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Susan Julius, NCEA; telephone: 703–347–8619; facsimile: 703–347–8694; or email: *julius.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Project/Document

Water resources in the United States are affected by a number of climate stressors, including increasing temperatures, changing precipitation patterns, and extreme events. These changing conditions have implications for stormwater management as local decision makers look to improve existing infrastructure and build new stormwater systems. EPA and NOAA have conducted a number of workshops and other community efforts in cities and counties within the Chesapeake Bay and Great Lakes regions to initiate conversations about how projected land use and climate change could impact local water conditions and how adaptation (resiliency) planning can fit into decision-making processes to help meet existing goals. These conversations provided insights into the kinds of information that enable and facilitate communities' incorporation of climate change into local planning and decision making for stormwater management. The report reviews lessons learned from these adaptation planning experiences, including locally identified barriers to addressing climate change, methods to overcome barriers in the short term, and long term information needs to further assist communities in their stormwater adaptation efforts.

Dated: May 9, 2016.

Mary A. Ross,

Deputy Director, National Center for Environmental Assessment.

[FR Doc. 2016–11745 Filed 5–18–16; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice: 2016–6024]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

Form Title: EIB 92–51 Application for Special Buyer Credit Limit under the Multi-Buyer Export Credit Insurance Policy.

SUMMARY: The Export-Import Bank of the United States (EXIM Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

The Application for Special Buyer Credit Limit under the Multi-Buyer Export Credit Insurance Policy is used by policyholders, the majority of whom are U.S. small businesses, who export U.S. goods and services. This application provides EXIM Bank with the credit information necessary to make a determination of eligibility of a transaction for EXIM Bank support with a foreign buyer credit request and to obtain legislatively required assurance of repayment and fulfills other statutory requirements.

The application can be reviewed at: *http://www.exim.gov/sites/default/files/pub/pending/eib-92-51.pdf* Application for Special Buyer Credit Limit Multi-buyer Credit Insurance Policy.

DATES: Comments should be received on or before July 18, 2016 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *www.regulations.gov* or by mail to Jean Fitzgibbon, Export-Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 92–51 Application for Special buyer credit Limit Multi-buyer Credit Insurance Policy.

OMB Number: 3048–0015.

Type of Review: Regular.

Need and Use: The information requested enables the applicant to provide EXIM Bank with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements.

The only change to this form is to move a question about the buyer to an earlier section of the form. No new information is being collected.

Affected Public

This form affects entities involved in the export of U.S. goods and services.

The number of respondents: 4,300.

Estimated time per respondents: 25 minutes.

The frequency of response: As needed.

Annual hour burden: 1,792 total hours.

Government Expenses

Reviewing time per hour: 1 hour.

Responses per year: 4,300.

Reviewing time per year: 4,300 hours.

Average Wages per hour: $42.50.

*Average cost per year (time * wages):* $182,750.

Benefits and overhead: 20%.

Total Government Cost: $219,300.

Bonita Jones-McNeil,

Program Analyst, Agency Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2016–11784 Filed 5–18–16; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0298, 3060–0400]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before July 18, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0298.

Title: Part 61, Tariffs (Other than Tariff Review Plan).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents and Responses: 2,840 respondents; 4,277 responses.

Estimated Time per Response: 30 hours–50 hours.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 151–155, 201–205, 208, 251–271, 403, 502, and 503 of the Communications Act of 1934, as amended.

Frequency of Response: On occasion, annual, biennial, and one-time reporting requirements.

Total Annual Burden: 156,080 hours.

Total Annual Cost: $1,307,670.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR Section 0.459 of the Commission's rules.

Needs and Uses: On March 23, 2016, the Commission adopted a *Report and Order,* FCC 16–33, which reformed universal service for rate-of-return local exchange carriers (LECs). These reforms require approximately 95 rate-of-return LECs to make one-time tariff filings and NECA to make two tariff filings with the necessary support materials outside the normal annual filing period. We note that we are removing the requirement that competitive and incumbent LECs make a one-time intrastate tariff filing to establish Voice over Internet Protocol rates at intrastate levels, as this requirement has been met. Part 61 of the Commission's Rules, 47 CFR part 61, prescribes the framework for the initial establishment of and subsequent revisions to tariffs. The information collected through the carriers' tariffs and supporting documentation is used by the Commission and state commissions to determine whether the services are offered in a just and reasonable manner.

OMB Control Number: 3060–0400.

Title: Part 61, Tariff Review Plan (TRP).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 2,840 respondents; 5,437 responses.

Estimated Time per Response: 0.5 hours–53 hours.

Frequency of Response: On occasion, annual, biennial, and one-time reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 201, 202, 203, and 251(b)(5) of the Communications Act of 1934, as amended.

Total Annual Burden: 66,000 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Respondents are not being asked to submit confidential information to the Commission. If the Commission requests respondents to submit information which respondents believe are confidential, respondents may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: On March 23, 2016, the Commission adopted the Rate-of-Return Order, FCC 16–33, which reformed universal service for rate-of-return local exchange carriers (LECs). These reforms require rate-of-return LECs to make tariff filings with the necessary support materials outside the normal tariff filing period. We note that at this time, we are removing the requirement that competitive and incumbent LECs make a one-time intrastate tariff filing to establish Voice over Internet Protocol rates at intrastate levels, as this requirement has been met.

Sections 201, 202, and 203 of the Communications Act of 1934, as amended (the Act) require common carriers to establish just and reasonable charges, practices, and regulations for their interstate telecommunications services provided. For services that are still covered under Section 203, tariff schedules containing charges, rates, rules, and regulations must be filed with the Commission. Part 61 of the Commission's Rules, 47 CFR part 61, prescribes the framework for the establishment of and subsequent revisions to tariffs. Certain local exchange carriers are required to submit a biennial or annual Tariff Review Plan (TRP) in partial fulfillment of cost support material required by part 61. The Commission developed the TRP to minimize reporting burdens on reporting incumbent local exchange carriers (ILECs). TRPs set forth the summary material ILECs file to support revisions to the rates in their interstate access service tariffs. For those services still requiring cost support, TRPs assist the Commission in determining whether ILEC access charges are just and reasonable as required under the Act.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of Secretary.

[FR Doc. 2016–11807 Filed 5–18–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, May 24, 2016 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

Items To Be Discussed

Compliance matters pursuant to 52 U.S.C. 30109.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceeding, or arbitration.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Commission Secretary and Clerk.

[FR Doc. 2016–12006 Filed 5–17–16; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), to approve of and assign OMB numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB number.

DATES: Comments must be submitted on or before July 18, 2016.

ADDRESSES: You may submit comments, identified by *FR 2046* or *FR 3067,* by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* .

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW.) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Report

Report title: Report of Selected Balance Sheet Items for Discount Window Borrowers.

Agency form number: FR 2046.

OMB control number: 7100–0289.

Frequency: On occasion.

Reporters: Depository institutions.

Estimated annual burden hours: Primary and Secondary Credit, 1 hour; Seasonal Credit, 383 hours.

Estimated average hours per response: Primary and Secondary Credit, 0.75 hours; Seasonal Credit, 0.25 hours.

Number of respondents: Primary and Secondary Credit, 1; Seasonal Credit, 85.

General description of report: The Board's Legal Division has determined that the FR 2046 is authorized pursuant to sections 10B and 19(b)(7) of the Federal Reserve Act (12 U.S.C. 347b and 461(b)(7)) and the Board's Regulation A (12 CFR part 201). Sections 10B and 19(b)(7) authorize Federal Reserve Banks to make advances to a member bank or other depository institution on the borrower's time or demand notes under rules and regulations prescribed by the Board. The Board's Regulation A sets out the rules for obtaining such advances. The FR 2046 is required to obtain a benefit because an entity may be required to file the form in order to borrow from the Federal Reserve's discount window. Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: The Federal Reserve's Regulation A, Extensions of Credit by Federal Reserve Banks, requires that Reserve Banks review balance sheet data in determining whether to extend credit and to help ascertain whether undue use is made of such credit. Depository institutions that borrow from the discount window report on the FR 2046 certain balance sheet data for a period that encompasses the dates of borrowing.

Current Actions: The Federal Reserve proposes to extend, without revision, the FR 2046.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, With Revision, of the Following Report

Report title: Payments Research Survey.

Agency form number: FR 3067.

OMB control number: 7100–0355.

Frequency: On occasion.

Reporters: Depository institutions, financial and nonfinancial businesses and related entities, individual consumers, households, and federal, state and local government agencies.

Estimated annual burden hours: 30,000 hours.

Estimated average hours per response: 1.5 hours.

Number of respondents: 10,000.

General description of report: This survey is generally authorized by sections 2A and 12A of the Federal Reserve Act (FRA). Section 2A of the FRA requires that the Board of Governors of the Federal Reserve System and the Federal Open Market Committee (FOMC) maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of the maximum employment, stable prices, and moderate long-term interest rates (12 U.S.C. 225a). In addition, under section 12A of the FRA, the FOMC is required to implement regulations relating to the open market operations conducted by Federal Reserve Banks with a view to accommodating commerce and business and with regard to the regulations' bearing upon the general credit situation of the country (12 U.S.C. 263). The authority of the Federal Reserve to collect economic data to carry out the requirements of these provisions is implicit. Accordingly, the Federal

Reserve is authorized to use the FR 3067 by sections 2A and 12A of the FRA.

Additionally, depending on the survey respondent, the information collection may be authorized under a more specific statute. These statutes are:

- Expedited Funds Availability Act section 609 (12 U.S.C. 4008)
- Electronic Fund Transfer Act section 920 (15 U.S.C. 1693o–2)
- The Check Clearing for the 21st Century Act section 15 (12 U.S.C. 5014)
- Federal Reserve Act section 11 (Examinations and reports, Supervision over Reserve Banks, and Federal Reserve Note provisions, 12 U.S.C. 248); section 11A (Pricing of Services, 12 U.S.C. 248a); section 13 (FRB deposits and collections, 12 U.S.C. 342); and section 16 (Issuance of Federal Reserve notes, par clearance, and FRB clearinghouse, 12 U.S.C. 248–1, 360, and 411).

Under the appropriate authority, the Federal Reserve may make submission of survey information mandatory for entities such as financial institutions or payment card networks; submissions would otherwise be voluntary.

The ability of the Federal Reserve to maintain the confidentiality of information provided by respondents to the FR 3067 surveys will be determined on a case-by-case basis depending on the type of information provided for a particular survey. For instance, in some circumstances, no issue of confidentiality will arise as the surveys may be conducted by private firms under contract with the Federal Reserve and names or other directly identifying information would not be provided to the Federal Reserve. In circumstances where identifying information is provided to the Federal Reserve, such information could possibly be protected under the Freedom of Information Act (FOIA), exemptions 4 and 6. If the survey is mandatory and is undertaken as part of the supervisory process, information could be protected under FOIA exemption 8, which protects information relating to the examination reports (5 U.S.C. 552(b)(8)).

Abstract: This survey collects information, as needed, on specific and time sensitive issues, which may affect the Federal Reserve's decision making. Respondents may comprise depository institutions, financial and nonfinancial businesses and related entities, individual consumers, households, and federal, state and local government agencies. This survey may be mandatory for a certain subset of entities and voluntary for all other respondents. The Federal Reserve uses this event-driven survey to obtain information specifically tailored to the Federal Reserve System's supervisory, regulatory, fiscal, and operational responsibilities. The Federal Reserve may conduct various versions of the survey, as needed, and may survey respondents up to four times per year. The frequency and content of the questions depends on changing economic, regulatory, supervisory, or legislative developments.

Current Actions: The Federal Reserve proposes to add federal, state, and local government agencies as potential respondents to a survey. The Federal Reserve also proposes adjusting the burden by decreasing the estimated number of responses per year from four to two; decreasing the hours per response from 3 to 1.5; and by increasing the estimated number of respondents from 5,000 to 10,000.

Board of Governors of the Federal Reserve System, May 12, 2016.

Michael Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2016–11781 Filed 5–18–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 161 0045]

American Air Liquide Holdings, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before June 14, 2016.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/airliquideairgasconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "In the Matter of American Air Liquide Holdings, Inc.,—Consent Agreement; File No. 161–0045" on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/airliquideairgasconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write "In the Matter of American Air Liquide Holdings, Inc.,—Consent Agreement; File No. 161–0045" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Christine Tasso (202–326–2232), Bureau of Competition, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 13, 2016), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before June 14, 2016. Write "In the Matter of American Air Liquide Holdings, Inc.,—Consent Agreement; File No. 161–0045" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which . . . is privileged or confidential," as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/airliquideairgasconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write "In the Matter of American Air Liquide Holdings, Inc.,—Consent Agreement; File No. 161–0045" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before June 14, 2016. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Orders To Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") designed to remedy the anticompetitive effects resulting from the proposed acquisition of Airgas, Inc. ("Airgas") by American Air Liquide Holdings, Inc. ("Air Liquide"). Pursuant to the Consent Agreement, Air Liquide will divest sixteen air separation units ("ASUs"), four vertically integrated dry ice and liquid carbon dioxide plants, two separate liquid carbon dioxide plants, two nitrous oxide plants, and three retail packaged welding gas and hardgoods stores. Air Liquide has agreed to divest the required facilities to one or more Commission-approved buyers within four months of consummating its transaction with Airgas. The divestiture of these facilities and related assets will preserve the competition between Air Liquide and Airgas that the proposed acquisition would otherwise eliminate.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make final the accompanying Decision and Order ("Order").

II. The Transaction

Pursuant to an Agreement and Plan of Merger dated November 17, 2015, a wholly owned subsidiary of Air Liquide will merge with and into Airgas in a transaction valued at approximately $13.4 billion. The Commission's Complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by substantially lessening competition in various geographic markets for bulk oxygen, bulk nitrogen, bulk argon, bulk nitrous oxide, bulk liquid carbon dioxide, dry ice, and retail packaged welding gases.

III. The Parties

Air Liquide is an international company specializing in industrial gases and related services. Air Liquide is the fourth-largest atmospheric gas producer in the United States, operating forty-nine liquid ASUs spread throughout the country. In the United States, Air Liquide also operates two nitrous oxide production facilities and eleven liquid carbon dioxide production facilities, six of which also produce dry ice. Air Liquide has largely exited its retail packaged gas and hardgoods business in the United States, but still operates five branch locations in Alaska. In 2015, Air Liquide's revenue totaled €16.4 billion, with €3.9 billion coming from the United States.

Airgas, headquartered in Radnor, Pennsylvania, is the leading U.S. distributor of packaged industrial, medical, and specialty gases and hardgoods, such as welding equipment and supplies. Airgas is the fifth-largest atmospheric gas producer in the United States, operating seventeen liquid ASUs, most of which are concentrated in the eastern half of the country. Airgas also operates a number of other industrial gas production plants, including three nitrous oxide production facilities, eleven liquid carbon dioxide production facilities, and fourteen dry ice production facilities. Airgas operates a network of approximately nine hundred retail branches where it sells hardgoods and packaged gas. For the fiscal year ending March 31, 2015, Airgas's consolidated net sales were approximately $5.3 billion, with over 98% of those revenues coming from the United States.

IV. The Relevant Markets for Bulk Oxygen, Bulk Nitrogen, and Bulk Argon

Atmospheric gases are gases that are present in the Earth's atmosphere. Industrial gas suppliers like Airgas and Air Liquide produce atmospheric gases for use in a wide range of applications, including oil and gas, steelmaking, health care, and food manufacturing. Liquid oxygen, nitrogen, and argon are three of the most widely used atmospheric industrial gases, and each has specific properties that make it uniquely suited for the applications for which it is used. For most of these applications, there is no substitute for the use of oxygen, nitrogen, or argon.

Atmospheric gases are distributed to customers in different forms and methods depending on the volume of gas the customer requires. Customers who require large volumes are supplied either by on-site ASUs that are located at the customer's facility or by a pipeline connecting a plant to that customer. Bulk customers are those who have significant volume requirements, but are not large enough to justify on-site or pipeline gas delivery. Bulk customers typically are supplied with bulk oxygen, bulk nitrogen, or bulk argon in cryogenic trailers carrying the gas in liquid form. The liquid form is more condensed than the gaseous form and therefore easier to transport and store in large quantities. The bulk liquid gases are then stored in tanks located at the customer site. From there, customers can either use the product in its liquid form or convert it back to gas. Small-volume customers purchase nitrogen, oxygen, or argon in cylinders containing the product in gaseous form. These smaller customers are usually served by distributors, who receive their product from industrial gas suppliers in bulk liquid form. It is not feasible for bulk oxygen, bulk nitrogen, or bulk argon customers to switch distribution methods because their demand is too great for cylinder delivery and too small for on-site, or pipeline delivery.

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[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

For atmospheric gases, the ratio of the product's value to its transportation costs largely determines the relevant geographic market. Due to the relatively low sales price of bulk oxygen and nitrogen and the significant freight costs associated with transporting them, these gases can generally only be shipped economically a maximum distance of approximately 100 to 250 miles from the ASU that produces the gas. Therefore, it is appropriate to analyze the competitive effects of the proposed acquisition in regional geographic markets for bulk oxygen and bulk nitrogen. The relevant geographic markets in which to analyze the effects of the proposed acquisition are: (1) The Northeast; (2) the Mid-Atlantic; (3) the Southeast; (4) Atlanta and surrounding areas; (5) Arkansas and surrounding areas; (6) Oklahoma and surrounding areas; (7) Western Kentucky and surrounding areas; (8) Chicago, Milwaukee, and surrounding areas; (9) Western Ohio and surrounding areas; and (10) Pittsburgh, Cleveland, and surrounding areas. Because bulk argon is a rarer and more expensive product than bulk oxygen and bulk nitrogen, it may be economically transported over greater distances. Therefore, the relevant geographic area in which to analyze the effects of the proposed acquisition on the bulk argon market is the United States.

The proposed acquisition would harm competition in the relevant markets for bulk oxygen and bulk nitrogen. Each market includes areas in which both Air Liquide and Airgas have plants that are particularly well situated to economically serve a large set of customers. The proposed acquisition would eliminate an important source of competition for those customers, would increase concentration in the relevant markets, and would cause prices to rise. For bulk argon, there are six significant suppliers in the United States, the largest of which is Air Liquide. The proposed acquisition would substantially increase concentration in bulk argon, creating a highly concentrated market.

V. The Relevant Market for Bulk Nitrous Oxide

Nitrous oxide is a clear, odorless gas that is produced by heating and purifying ammonium nitrate. Commonly known as "laughing gas," nitrous oxide is mainly used by dentists as an analgesic or a weak anesthetic. Other uses for nitrous oxide include augmenting combustion in automotive products, oxidizing rocket fuel, and manufacturing whipped cream and semiconductors. Customers who purchase nitrous oxide in bulk form are typically distributors who repackage the gas in smaller quantities. Most sales for end-use are made in cylinders to dental offices. Because of the unique properties of nitrous oxide, other gases are not considered substitutes. Consequently, customers would not switch to another gas or product even if the price of bulk nitrous oxide increased by five to ten percent.

Currently only five nitrous oxide production facilities service the entire United States and Canada. Bulk nitrous oxide is typically transported in tanker trucks. When purchasing bulk nitrous oxide, customers are not concerned with finding the closest production facility when choosing a supplier. Therefore, the relevant geographic area in which to analyze the effects of the proposed acquisition on the bulk nitrous oxide market is the United States and Canada.

Air Liquide and Airgas are the only two producers of nitrous oxide in the United States and Canada. Airgas is the largest producer of nitrous oxide in North America and maintains three separate facilities located Cantonment, Florida, Yazoo City, Mississippi, and Maitland, Ontario. Air Liquide operates two North American nitrous oxide plants in Donora, Pennsylvania and Richmond, California. The proposed acquisition would produce a monopoly in the market for bulk nitrous oxide.

VI. The Relevant Markets for Bulk Liquid Carbon Dioxide

Carbon dioxide is a "process gas," meaning that it is captured as a by-product of other manufacturing processes, such as ethanol, ammonia, and hydrogen. It is also captured from natural sources such as natural gas wells. The carbon dioxide is then put in liquid form through a cryogenic process in plants typically located adjacent to carbon dioxide gas sources. The most common application for liquid carbon dioxide is food and beverage production, where it is used to carbonate beverages, chill and freeze food, and stun animals before they are slaughtered. For the vast majority of applications, there are no viable substitutes for liquid carbon dioxide.

Suppliers deliver liquid carbon dioxide to customers in bulk trailers or rail cars. Most customers store liquid carbon dioxide in tanks located at their manufacturing facilities until it is used. Customers would not switch to micro-bulk or cylinder delivery because bulk delivery is far cheaper and they would have to contend with managing significantly more deliveries to meet their needs. In addition, customers would not consider self-sourcing liquid carbon dioxide unless the cost increased significantly more than ten percent because extracting carbon dioxide requires expensive infrastructure and the supply of carbon dioxide is shrinking.

Significant freight costs associated with transporting liquid carbon dioxide relative to its sales price make it economical to ship liquid carbon dioxide no more than 250 miles by truck. In areas with few or no carbon dioxide sources, liquid carbon dioxide is shipped as much as 750 miles by rail. Therefore, it is appropriate to analyze the competitive effects of the proposed acquisition in regional geographic markets for bulk liquid carbon dioxide. For bulk liquid carbon dioxide, the relevant geographic markets in which to analyze the effects of the proposed acquisition are: (1) Indiana, Kentucky, and surrounding areas; (2) Mississippi and surrounding areas; and (3) the Texas Panhandle and surrounding areas.

Two of the three relevant markets for bulk liquid carbon dioxide are highly concentrated and the proposed acquisition would substantially increase concentration. While the Indiana, Kentucky and surrounding areas market is moderately concentrated, the proposed acquisition would produce a significant increase in concentration and would leave the combined entity as the leading supplier. In addition, for some customers in that region, the merging firms are the closest competitors.

VII. The Relevant Markets for Dry Ice

In the United States, both parties produce and sell dry ice. Dry ice is the solid form of carbon dioxide, and a significant portion of the carbon dioxide market. It is produced when liquid carbon dioxide is injected into an atmospheric chamber, which causes some of the liquid carbon dioxide to vaporize into a gas, while reducing the temperature of the remaining liquid. The remaining liquid solidifies into a snow-like consistency. This snow is then collected and pressed into dry ice blocks or pellets, and distributed to customers in standard or bulk pellet bags, or in blocks, slices, or sticks. Dry ice has many applications, including shipping of frozen food and medical supplies, cooling of materials during production, and industrial blast cleaning. It is used in a variety of industries such as food processing, transportation, and biotechnology. Suppliers of dry ice either sell directly to end users, or wholesale to distributors or resellers. For the vast majority of applications, there are no viable substitutes for dry ice.

Dry ice begins to dissipate as soon as it is produced. As a result, dry ice is not typically transported more than 150 miles to a customer, although where local supply is insufficient, customers are willing to have dry ice shipped up to 350 miles. Therefore, it is appropriate to analyze the competitive effects of the proposed acquisition in regional geographic markets for dry ice. The relevant geographic markets in which to analyze the effects of the proposed acquisition are: (1) The San Francisco Bay Area; (2) Iowa and surrounding areas; and (3) the Texas Panhandle and surrounding areas.

Air Liquide and Airgas are the only two producers of dry ice in the San Francisco Bay Area. Consequently, the proposed acquisition, without remedy, would lead to Air Liquide holding a monopoly. In the two remaining dry ice markets, the proposed acquisition would substantially decrease competition in an already highly concentrated market, and would leave the combined entity as the leading supplier.

VIII. The Relevant Markets for Retail Packaged Welding Gases

Air Liquide and Airgas operate retail packaged gas stores in close proximity to each other in Anchorage, Fairbanks, and Kenai, Alaska. Packaged welding gas and hardgoods stores are outlets where customers can purchase cylinders of various gases and related hardgoods used for welding, such as safety gear and other physical goods. While customers may choose to purchase both their packaged welding gases and hardgoods at the same retail location, they are also willing to purchase packaged welding gas from one store and hardgoods from another. Customers cannot turn to alternatives for their packaged welding gases, such as bulk delivery from ASUs or filling their own cylinders because their purchasing volumes are too low to justify large quantity purchases. Additionally, for the vast majority of applications, there are no viable substitutes for packaged welding gases.

Generally, purchasers of packaged welding gases travel approximately twenty-five miles to make purchases at retail outlets. Even in Alaska, where there are fewer retail stores and customers may be willing to travel further, it is unlikely that customers would travel over fifty miles to a retail location to purchase packaged welding gases. Therefore, it is appropriate to analyze the competitive effects of the proposed acquisition in local geographic markets for retail packaged welding gas. Accordingly, the relevant geographic markets at issue in this case are the local areas of: (1) Anchorage, Alaska; (2) Fairbanks, Alaska; and (3) Kenai, Alaska. The proposed acquisition would reduce the number of competitors from two to one in each of these markets.

VIIII. Effects of the Acquisition

The proposed acquisition would eliminate direct and substantial competition between Air Liquide and Airgas in each of the relevant markets, provide Air Liquide with a larger base of sales on which to enjoy the benefit of a unilateral price increase, and eliminate a competitor to which customers otherwise could have diverted their sales in markets where alternative sources of supply are limited. The proposed acquisition, therefore, likely would allow Air Liquide to exercise market power unilaterally, increasing the likelihood that purchasers of bulk oxygen, bulk nitrogen, bulk argon, bulk nitrous oxide, bulk liquid carbon dioxide, dry ice, or retail packaged welding gas would be forced to pay higher prices in the relevant areas.

The proposed acquisition would also enhance the likelihood of collusion or coordinated action between or among the remaining firms in the relevant markets for bulk oxygen, bulk nitrogen, bulk argon, bulk liquid carbon dioxide, and dry ice because a significant competitor would be eliminated, and only a small number of viable competitors would remain. In addition, certain conditions prevalent in these relevant markets, including the relative homogeneity of the firms and products involved and availability of detailed market information, are conducive to collusion or coordinated action.

X. Entry

New entry into the relevant markets would not occur in a timely manner sufficient to deter or counteract the likely adverse competitive effects of the proposed acquisition.

Entry into the bulk oxygen, nitrogen, and argon markets is costly, difficult, and unlikely because of, among other things, the time and cost required to construct the ASUs that produce these products. Constructing an ASU at a scale sufficient to be viable in the market would cost at least $30 to $100 million, most of which are sunk costs. Moreover, it is not economically justifiable to build an ASU unless a significant amount of the plant's capacity has been pre-sold prior to construction, either to an on-site customer or to customers with commitments under contract. Such pre-sale opportunities occur infrequently and unpredictably and can take several years to secure.

Entry into the bulk nitrous oxide market is costly, difficult, and unlikely because of, among other things, the time and cost required to construct a plant capable of producing nitrous oxide. Constructing such a plant would cost at least $5 to $10 million, and the demand for nitrous oxide is generally insufficient to justify the investment in building a nitrous oxide plant. In addition, there are regulatory barriers to overcome due to the hazardous nature of producing nitrous oxide.

Entry into the bulk liquid carbon dioxide and dry ice markets would also not be timely, likely, or sufficient to deter or counteract the adverse competitive effects of the proposed acquisition. Constructing a plant capable of producing bulk liquid carbon dioxide would cost at least $10 to $30 million. In addition, successful entry into the bulk liquid carbon dioxide market requires access to raw carbon dioxide supply sources, which are typically unavailable due to long-term contracts with incumbent liquid carbon dioxide suppliers. For dry ice production, there are similar entry barriers. Because liquid carbon dioxide is the primary input in dry ice production, the most significant barrier to entering the market for dry ice is obtaining a liquid carbon dioxide source. The entrant would also have to build a dry ice facility, but sales opportunities would likely be too small to justify the sunk costs associated with the required investment.

Entry into the retail packaged welding gases market would also not be timely, likely or sufficient to deter or counteract the likely adverse competitive effects of the proposed acquisition. Currently, Air Liquide is the only entity capable of filling packaged gases in the relevant geographic markets for retail packaged welding gas, all of which are in Alaska. A new entrant would be required either to purchase bulk gases and construct a fill plant to put the gases in packaged form or to establish a supply network to transport packaged gases from a fill plant outside of Alaska to the relevant geographic markets. Because of these obstacles, new entry into the relevant markets is unlikely to occur.

XI. The Consent Agreement

The proposed Consent Agreement is designed to eliminate the competitive concerns raised by Air Liquide's proposed acquisition of Airgas in each relevant market. Under the terms of the proposed Consent Agreement, Air Liquide is required to divest sixteen ASUs, twelve of which are currently owned and operated by Air Liquide and four of which are currently owned and operated by Airgas. The Air Liquide-operated ASUs are located in: (1) Burlington, Wisconsin; (2) Chattanooga, Tennessee; (3) Feura Bush, New York; (4) Holland, Ohio; (5) Mapleton, Illinois; (6) Middletown, Ohio; (7) Mount Vernon, Indiana; (8) Pittsboro, Indiana; (9) St. Marys, Pennsylvania; (10) Spartanburg, South Carolina; (11) Wake Forest, North Carolina; and (12) West Point, Virginia. The Airgas-operated ASUs are located in: (1) Carrollton, Kentucky; (2) Gaston, South Carolina; (3) Lawton, Oklahoma; and (4) Mulberry, Arkansas. Air Liquide is also required to divest both of its nitrous oxide plants, one located in Denora, Pennsylvania and the other in Richmond, California. Air Liquide must also divest four co-located liquid carbon dioxide and dry ice facilities, which comprise its entire dry ice business, located in: (1) Borger, Texas; (2) Galva, Iowa; (3) Sioux City, Iowa; (4) and Martinez, California.

Additionally, Air Liquide will divest two liquid carbon dioxide-only facilities in Madison, Mississippi and Washington, Indiana along with the associated rail depot located in Fort Meade, Florida. Lastly, Air Liquide will divest Airgas's retail packaged welding gas and hardgoods stores located in Anchorage, Fairbanks, and Kenai, Alaska. Additionally, with regard to the ASU assets, although the anticompetitive effects of Air Liquide's acquisition of Airgas are related to the bulk liquid oxygen, nitrogen, and argon markets, the pipeline oxygen and nitrogen businesses and contracts located at the ASUs are also being divested because they are critical to the viability, efficiency, and competitiveness of each plant. Air Liquide has agreed to divest the required facilities, together with all related equipment, customer and supply contracts, technology, and goodwill, to one or more Commission-approved buyers within four months of consummating its transaction with Airgas.

Any acquirer of the divested assets must receive the prior approval of the Commission. The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed acquirer of divested assets must not itself present competitive problems. There are a number of parties interested in purchasing the assets to be divested that have the expertise, experience, and financial viability to successfully purchase and manage these assets and retain the current level of competition in the relevant markets. The Commission is therefore satisfied that sufficient potential buyers for the divested assets in each relevant market currently exist.

The proposed Consent Agreement incorporates a proposed Order to Maintain Assets to ensure the continued operations of the divestiture assets while a sale is conducted, and for a brief transition period once the Commission approves a buyer for the assets. The proposed Order to Maintain Assets also allows the Commission to appoint an interim monitor to oversee compliance with all the obligations and responsibilities under the proposed Order and requires Air Liquide to execute an agreement conferring upon the interim monitor all of the rights, powers, and authorities necessary to permit the monitor to ensure the continued health and competitiveness of the divested businesses.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2016–11763 Filed 5–18–16; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Tribal Maternal, Infant, and Early Childhood Home Visiting Program Implementation Plan Guidance and Form 1: Demographic and Service Utilization Data.

OMB No.: 0970–0389.

Description: Social Security Act, Title V, Section 511 (42 U.S.C. 711), as amended by the Medicare Access and Children's Health Insurance Program (CHIP) Reauthorization Act of 2015 (Pub. L. 114–10), created the Maternal, Infant, and Early Childhood Home Visiting Program (MIECHV) and authorized the Secretary of HHS (in Section 511(h)(2)(A)) to award grants to Indian tribes (or a consortium of Indian tribes), tribal organizations, or urban Indian organizations to conduct an early childhood home visiting program. The legislation set aside 3 percent of the total MIECHV program appropriation (authorized in Section 511(j)) for grants to tribal entities. Tribal MIECHV grants, to the greatest extent practicable, are to be consistent with the requirements of the MIECHV grants to states and jurisdictions (authorized in Section 511(c)), and include conducting a needs assessment and establishing quantifiable, measurable benchmarks.

The Administration for Children and Families, Office of Child Care and Office of the Deputy Assistant Secretary for Early Childhood Development, in collaboration with the Health Resources and Services Administration, Maternal and Child Health Bureau, awarded grants for the Tribal MIECHV Program. The Tribal MIECHV grant awards support 5-year cooperative agreements to conduct community needs and readiness assessments, plan for and implement high-quality, culturally-relevant, evidence-based home visiting programs in at-risk Tribal communities, and engage in rigorous evaluation activities to build the knowledge base on home visiting among American Indian and Alaska Native populations.

In Year 1 of the cooperative agreement, grantees must (1) conduct a comprehensive community needs and readiness assessment and (2) develop a plan to respond to identified needs. Grantees will be required to conduct or update a needs and readiness assessment and develop an implementation plan to respond to those needs, including a plan for demographic and service utilization data, performance measurement, and continuous quality improvement, and participating in or conducting rigorous evaluation activities. Grantees are expected to submit the implementation plan by the end of Year 1 of the grant, with draft submission milestones throughout the first year. As part of the non-competing continuation application for Years 3–5 of the grant, Tribal MIECHV grantees will update their implementation plans as necessary to ensure that the plan accurately reflects activities to be completed throughout the remainder of the grant.

Following each year that Tribal MIECHV grantees implement home visiting services, they must also submit Form 1: Demographic and Service Utilization Data.

Respondents: Tribal Maternal, Infant, and Early Childhood Home Visiting Program Grantees. (The information collection does not include direct interaction with individuals or families that receive the services).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Tribal Maternal, Infant, and Early Childhood Home Visiting Implementation Plan Guidance	25	1	1000	25,000
Tribal MIECHV Form 1 Demographic & Service Utilization Data & Service Data	25	1	500	12,500
Estimated Annual Burden Hours:				37,500

Estimated Total Annual Burden Hours: 37,500.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–11791 Filed 5–18–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Advisory Committee; Blood Products Advisory Committee; Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Blood Products Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Blood Products Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until May 13, 2018.

DATES: Authority for the Blood Products Advisory Committee will expire on May 13, 2016, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Bryan Emery, Division of Scientific Advisors and Consultants, Center for Biologics Evaluation and Research, Food and Drug Administration, 10993 New Hampshire Ave., Bldg. 71, Rm. 6132, Silver Spring, MD 20993–0002, 240–402–8054, *Bryan.emery@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services pursuant to 45 CFR part 11 and by the General Services Administration, FDA is announcing the renewal of the Blood Products Advisory Committee. The committee is a discretionary Federal advisory committee established to provide advice to the Commissioner.

The Blood Products Advisory Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which FDA has regulatory responsibility.

The Committee shall consist of a core of 17 voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of clinical and administrative medicine, hematology, immunology, blood banking, surgery, internal medicine, biochemistry, engineering, biological and physical sciences, biotechnology, computer technology, statistics, epidemiology, sociology/ethics, and other related professions. Members will be invited to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one non-voting member who is identified with industry interests.

The Commissioner or designee shall have the authority to select members of other scientific and technical FDA advisory committees (normally not to exceed 10 members) to serve temporarily as voting members and to designate consultants to serve temporarily as voting members when: (1) Expertise is required that is not available among current voting standing members of the Committee (when additional voting members are added to the Committee to provide needed expertise, a quorum will be based on the combined total of regular and added members), or (2) to comprise a quorum when, because of unforeseen circumstances, a quorum is or will be lacking. Because of the size of the Committee and the variety in the types of issues that it will consider, FDA may, in connection with a particular committee meeting, specify a quorum that is less than a majority of the current voting members. The Agency's regulations (21 CFR 14.22(d)) authorize a committee charter to specify quorum requirements.

If functioning as a medical device panel, a non-voting representative of consumer interests and a non-voting representative of industry interests will be included in addition to the voting members.

Further information regarding the most recent charter and other information can be found at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/BloodVaccinesandOtherBiologics/BloodProductsAdvisoryCommittee/ucm121602.htm* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This document is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please visit us at *http://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: May 13, 2016.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2016–11774 Filed 5–18–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Diabetes Outcome Measures Beyond Hemoglobin A1c: CDER Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration's (FDA) Center for Drug Evaluation and Research (CDER), is sponsoring a public workshop entitled "Diabetes Outcome Measures Beyond Hemoglobin A1c (HbA1c)." The purpose of this public workshop is to have a forum for dialogue with the public, patients, patient advocacy groups and industry to gain greater appreciation on the extent to which the current regulatory paradigm for antidiabetic drug therapies addresses the needs of patients with diabetes and to identify additional outcomes, beyond HbA1c, that are of direct relevance and importance to patients living with the disease.

DATES: The public workshop will be held on August 29, 2016, from 9 a.m. to 5 p.m.

ADDRESSES: The public workshop will be held at FDA's White Oak campus, 10903 New Hampshire Ave., Building 31 (The Great Room B, and C), Silver Spring, MD 20993. Entrance for the public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

FOR FURTHER INFORMATION CONTACT: Francis Kalush, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, *DIABHbA1c-CDER@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is announcing a public workshop entitled "Diabetes Outcome Measures Beyond Hemoglobin A1c." This public workshop is intended to gain greater appreciation on the extent to which the current regulatory paradigm for drugs to treat diabetes addresses the needs of patients with diabetes, to identify what the most urgent unmet patient needs are and to identify measures beyond HbA1c that would reliably capture outcomes important to the health or quality of life of patients living with diabetes. The ultimate purpose of identifying and qualifying these outcomes for regulatory purposes would be to continue to support the development of novel therapies that directly address the needs of patients living with the disease. There will be an opportunity for questions and answers following each presentation.

Registration: There is no registration fee to attend the public workshop. Early registration is recommended because seating is limited, and registration will be on a first-come, first-served basis. There will be no onsite registration. Persons interested in attending this workshop must register online at *http://www.fda.gov/Drugs/NewsEvents/ucm499281.htm* by July 29, 2016. For those without Internet access, please contact Francis Kalush (see **FOR FURTHER INFORMATION CONTACT**) to register.

If you need special accommodations due to a disability, please contact Francis Kalush (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance.

Transcripts: A transcript of the workshop will be available for review at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and on the Internet at *http://www.regulations.gov* approximately 30 days after the workshop. Transcripts will also be available in either hard copy or on CD–ROM, after submission of a Freedom of Information request. The Freedom of Information office address is available on the Agency's Web site at *http://www.fda.gov.*

Dated: May 13, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–11846 Filed 5–18–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Advisory Committee; Peripheral and Central Nervous System Drugs Advisory Committee, Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Peripheral and Central Nervous System Drugs Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Peripheral and Central Nervous System Drugs Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until June 4, 2018.

DATES: Authority for the Peripheral and Central Nervous System Drugs Advisory Committee will expire on June 4, 2016, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Moon Hee V. Choi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–

796–9001, FAX: 301–847–8533, *PCNS@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services pursuant to 45 CFR part 11 and by the General Services Administration, FDA is announcing the renewal of the Peripheral and Central Nervous System Drugs Advisory Committee. The committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Peripheral and Central Nervous System Drugs Advisory Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which the Food and Drug Administration has regulatory responsibility. The Committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of neurologic diseases.

The Committee shall consist of a core of nine voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of neurology, neuropharmacology, neuropathology, otolaryngology, epidemiology or statistics, and related specialties. Members will be invited to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one non-voting member who is identified with industry interests. Further information regarding the most recent charter and other information can be found at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/Drugs/PeripheralandCentralNervousSystemDrugsAdvisoryCommittee/ucm107494.htm* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This document is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please visit us at *http://www.fda.gov/AdvisoryCommittees/default.htm*.

Dated: May 13, 2016.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2016–11776 Filed 5–18–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Advisory Committee; Drug Safety and Risk Management Advisory Committee, Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Drug Safety and Risk Management Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Drug Safety and Risk Management Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until May 31, 2018.

DATES: Authority for the Drug Safety and Risk Management Advisory Committee will expire on May 31, 2016, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Philip A. Bautista, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, *DSARM@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services pursuant to 45 CFR part 11 and by the General Services Administration, FDA is announcing the renewal of the Drug Safety and Risk Management Advisory Committee. The committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Drug Safety and Risk Management Advisory Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which the Food and Drug Administration has regulatory responsibility. The Committee reviews and evaluates information on risk management, risk communication, and quantitative evaluation of spontaneous reports for drugs for human use and for any other product for which the Food and Drug Administration has regulatory responsibility. The Committee also advises the Commissioner of Food and Drugs regarding the scientific and medical evaluation of all information gathered by the Department of Health and Human Services and the Department of Justice with regard to safety, efficacy, and abuse potential of drugs or other substances, and recommends actions to be taken by the Department of Health and Human Services with regard to the marketing, investigation, and control of such drugs or other substances.

The Committee shall consist of a core of 11 voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of risk communication, risk management, drug safety, medical, behavioral, and biological sciences as they apply to risk management, and drug abuse. Members will be invited to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one non-voting member who is identified with industry interests.

Further information regarding the most recent charter and other information can be found at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/Drugs/DrugSafetyandRiskManagementAdvisoryCommittee/ucm094886.htm* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This document is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please visit us at *http://www.fda.gov/AdvisoryCommittees/default.htm*.

Dated: May 13, 2016.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2016–11773 Filed 5–18–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

NAME: Advisory Commission on Childhood Vaccines (ACCV).

DATE AND TIME: June 3, 2016, 9:00 a.m. to 12:30 p.m. EDT.

PLACE: 5600 Fishers Lane, Conference Room 08SW01, Rockville, MD 20857.

STATUS: The ACCV will meet on Friday, June 3, 2016, from 9:00 a.m. to 12:30 p.m. at 5600 Fishers Lane, Conference Room 08SW01, Rockville, MD 20857.

The public can join the meeting by:

1. (In Person) Persons interested in attending the meeting in person are encouraged to submit a written notification to: Annie Herzog, Division of Injury Compensation Programs, Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 8N146B, Rockville, MD 20857 or email: *aherzog@hrsa.gov*. Since this meeting is held in a Federal government building, attendees will need to go through a security check to enter the building and participate in the meeting. This written notification is encouraged so that a list of attendees can be provided for quicker entry through security. Persons may attend in person without providing written notification, but their entry into the building may be delayed due to security checks and the requirement to be escorted to the meeting by a Federal government employee. To request an escort to the meeting after entering the building, call Mario Lombre at 301–443–3196. The meeting will be held at 5600 Fishers Lane, Conference Room 08SW01, Rockville, MD 20857. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below at least 10 days prior to the meeting.

2. (Audio Portion) Calling the conference phone number, 800–799–3561, and providing the following information:

Leaders Name: Dr. Narayan Nair
Password: 8164763

3. (Visual Portion) Connecting to the ACCV Adobe Connect Pro Meeting using the following URL: *https://hrsa.connectsolutions.com/accv/* (copy and paste the link into your browser if it does not work directly, and enter as a guest). Participants should call and connect 15 minutes prior to the meeting in order for logistics to be set up. If you have never attended an Adobe Connect meeting, please test your connection using the following URL: *https://hrsa.connectsolutions.com/common/help/en/support/meeting_test.htm* and get a quick overview by following URL: *http://www.adobe.com/go/connectpro_overview.*

Call (301) 443–6634 or send an email to *aherzog@hrsa.gov* if you are having trouble connecting to the meeting site.

Agenda: The agenda items for the June 2016 meeting will include, but are not limited to, updates from: The Division of Injury Compensation Programs (DICP), Department of Justice (DOJ), National Vaccine Program Office (NVPO), Immunization Safety Office (Centers for Disease Control and Prevention), National Institute of Allergy and Infectious Diseases (National Institutes of Health) and Center for Biologics, Evaluation and Research (Food and Drug Administration). A draft agenda and additional meeting materials will be posted on the ACCV Web site (*http://www.hrsa.gov/advisorycommittees/childhoodvaccines/index.html*) prior to the meeting. Agenda items are subject to change as priorities warrant.

Public Comment: Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Annie Herzog, Division of Injury Compensation Programs, Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 8N146B, Rockville, MD 20857 or email: *aherzog@hrsa.gov.* Requests should contain the name, address, telephone number, email address, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. DICP will notify each presenter by email, mail, or telephone of the assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the public comment period. Public participation and ability to comment will be limited to space and time as it permits.

FOR FURTHER INFORMATION CONTACT: Anyone requiring information regarding the ACCV should contact Annie Herzog, Division of Injury Compensation Programs, Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 8N146B, Rockville, MD 20857; telephone (301) 443–6593, or email: *aherzog@hrsa.gov.*

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–11790 Filed 5–18–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0945–0004]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for renewal of the approved information collection assigned OMB control number 0945–0004, scheduled to expire on May 31, 2016. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before June 20, 2016.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the OMB control number 0945–0004 and document identifier HHS–OS–30D for reference.

Information Collection Request Title: Health Insurance Reform Security Standards—Final Rule.

The final rule was published in the **Federal Register** (68 FR 8334) as CMS–0049–F published on February 20, 2003. On May 22, 2013, CMS 0938–0949 was transferred to OCR 0945–0004.

Abstract: Office of Civil Rights, OCR requests approval to extend this collection without change while OMB reviews our request to incorporate the burdens of compliance with the Security Rule into another existing ICR (OMB #0945–0003, for the HIPAA Privacy Rule and Supporting Regulations), which is being revised to better reflect our experience in administering and enforcing the HIPAA Rules. This ICR extends the existing approved information collection for applicable compliance activities associated with the HIPAA Security Rule. When the revised ICR with OMB #0945–0003 is approved, we will request that this ICR (OMB #0945–0004) be discontinued.

Likely Respondents: HIPAA covered entities and their business associates.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Response type	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
45 CFR 164.306 Justification	75,000	3	15/60	56,250
45 CFR 164.308 Security incident report	50	1	8	400
45 CFR 164.308 Contingency plan	60,000	1	8	480,000
45 CFR 164.310 Physical safeguard policies and procedures	500	1	10/60	83
45 CFR 164.314 Problem reports	10	1	1	10
Total				536,743

Terry S. Clark,

Asst Information Collection Clearance Officer.

[FR Doc. 2016–11757 Filed 5–18–16; 8:45 am]

BILLING CODE 4153–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Decision To Evaluate a Petition To Designate a Class of Employees From Bliss and Laughlin Steel in Buffalo, New York, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: NIOSH gives notice of a decision to evaluate a petition to designate a class of employees from Bliss and Laughlin Steel in Buffalo, New York, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 1090 Tusculum Avenue, MS C–46, Cincinnati, OH 45226–1938, Telephone 877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV.*

SUPPLEMENTARY INFORMATION:

Authority: 42 CFR 83.9–83.12.

Pursuant to 42 CFR 83.12, the initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Bliss and Laughlin Steel.

Location: Buffalo, New York.

Job Titles and/or Job Duties: All workers who worked in any area.

Period of Employment: January 1, 1999 through December 31, 1999.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2016–11804 Filed 5–18–16; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0945–0003–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for revision of the approved information collection assigned OMB control number 0945–0003, scheduled to expire on January 1, 2017. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before June 20, 2016.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the OMB control number 0945–0003–30D for reference.

Proposed Project: HIPAA Privacy, Security, and Breach Notification Rules, and Supporting Regulations Contained in 45 CFR parts 160 and 164.

Abstract: This revision does not change any requirements of the HIPAA Privacy, Security, and Breach Notification Rules. Among other updates summarized below, the ICR requests to rename the information collection and incorporate into it the substance of two other information collections (#0945–0004, set to expire on May 31, 2016; and #0945–0001, expiring on September 30, 2016), which then would be discontinued. The ICR addresses the burden on regulated entities for compliance with the information collection requirements of the HIPAA Privacy, Security, and Breach Notification Rules; the voluntary burden on members of the public for obtaining information from covered entities regarding breaches of their protected health information; and the information collection burden on the Office for Civil Rights (OCR) associated with administering aspects of the HIPAA Breach Notification program. Combining the three existing information collections identified above will allow the regulated community, the public, and OCR to more easily view and track the estimated burdens associated with the HIPAA Rules that are administered and enforced by OCR. In addition to combining the ICRs, the proposed updates take into account our experience administering the Rules to more accurately reflect the burdens of compliance with the applicable regulatory requirements; remove the estimated burden of initial compliance with the Omnibus HIPAA Final Rule, because we are well past the compliance dates; and incorporate increases in wages for the job categories that we expect to be involved in compliance activities.

ESTIMATED ANNUALIZED BURDEN TABLE

Section	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
160.204	Process for Requesting Exception Determinations (states or persons).	1	1	16	16
164.308	Risk Analysis—Documentation	1,700,000	1	10	17,000,000
164.308	Information System Activity Review—Documentation.	1,700,000	12	.75	15,300,000
164.308	Security Reminders—Periodic Updates	1,700,000	12	1	20,400,000
164.308	Security Incidents (other than breaches)—Documentation.	1,700,000	52	5	442,000,000
164.308	Contingency Plan—Testing and Revision	1,700,000	1	8	13,600,000
164.308	Contingency Plan—Criticality Analysis	1,700,000	1	4	6,800,000
164.310	Maintenance Records	1,700,000	12	6	122,400,000
164.314	Security Incidents—Business Associate reporting of incidents (other than breach) to Covered Entities.	1,000,000	12	20	240,000,000
164.316	Documentation—Review and Update	1,700,000	1	6	10,200,000
164.404	Individual Notice—Written and Email Notice (drafting).	58,481	1	.5	29,240
164.404	Individual Notice—Written and Email Notice (preparing and documenting notification).	58,481	1	.5	29,240
164.404	Individual Notice—Written and Email Notice (processing and sending).	58,481	353	.008	165,150
164.404	Individual Notice—Substitute Notice (posting or publishing).	2,746	1	1	2,746
164.404	Individual Notice—Substitute Notice (staffing toll-free number).	2,746	1	5.75	15,789
164.404	Individual Notice—Substitute Notice (individuals' voluntary burden to call toll-free number for information).	11,326,440	1	.125	1,415,805
164.406	Media Notice	267	1	1.25	333
164.408	Notice to Secretary (notice for breaches affecting 500 or more individuals).	267	1	1.25	333
164.408	Notice to Secretary (notice for breaches affecting fewer than 500 individuals).	58,215	1	1	58,215
164.414	500 or More Affected Individuals (investigating and documenting breach).	267	1	50	13,350
164.414	Less than 500 Affected Individuals (investigating and documenting breach).	2,479 (breaches affecting 10–499 individuals).	1	8	19,832
		55,736 (breaches affecting <10 individuals).	1	4	222,944
164.504	Uses and Disclosures—Organizational Requirements.	700,000	1	5/60	58,333
164.508	Uses and Disclosures for Which Individual authorization is required.	700,000	1	1	700,000
164.512	Uses and Disclosures for Research Purposes.	113,524	1	5/60	9,460
164.520	Notice of Privacy Practices for Protected Health Information (health plans—periodic distribution of NPPs by paper mail).	100,000,000	1	0.25 minutes [1 hour per 240 notices].	416,667
164.520	Notice of Privacy Practices for Protected Health Information (health plans—periodic distribution of NPPs by electronic mail).	100,000,000	1	0.167 minutes [1 hour per 360 notices].	278,333

ESTIMATED ANNUALIZED BURDEN TABLE—Continued

Section	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
164.520	Notice of Privacy Practices for Protected Health Information (health care providers—dissemination and acknowledgement).	613,000,000	1	3/60	30,650,000
164.522	Rights to Request Privacy Protection for Protected Health Information.	20,000	1	3/60	1,000
164.524	Access of Individuals to Protected Health Information (disclosures).	200,000	1	3/60	10,000
164.526	Amendment of Protected Health Information (requests).	150,000	1	5/60	12,500
164.526	Amendment of Protected Health Information (denials).	50,000	1	5/60	4,166
164.528	Accounting for Disclosures of Protected Health Information.	5,000	1	3/60	250
Total					921,813,702

Terry S. Clark,

Asst Information Collection Clearance Officer.

[FR Doc. 2016–11785 Filed 5–18–16; 8:45 am]

BILLING CODE 4153–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings. The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Synthetic Psychoactive Drug Abuse.

Date: June 3, 2016.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Jasenka Borzan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 4214 MSC 7814, Bethesda, MD 20892–7814, 301–435–1787, *borzanj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 143/144: Establishing Behavioral and Social Measures for Causal Pathway Research in Dental, Oral and Craniofacial Health.

Date: June 10, 2016.

Time: 1:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Grand, 2350 M Street NW., Washington, DC 20037.

Contact Person: Wenchi Liang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, 301–435–0681, *liangw3@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict One: Hematology and Vascular Biology.

Date: June 15, 2016.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anshumali Chaudhari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210. *chaudhaa@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function B Study Section.

Date: June 16–17, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: C–L Albert Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7806, Bethesda, MD 20892, 301–435–1016, *wangca@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Radiation Therapeutics and Biology Study Section.

Date: June 20–21, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Warwick Allerton Chicago Hotel, 701 N Michigan Ave, Chicago, IL 60611.

Contact Person: Bo Hong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–996–6208, *hongb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular and Surgical Devices.

Date: June 20, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jan Li, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, Bethesda, MD 20892, 301.435.1049, *lij21@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Diseases and Pathophysiology of the Visual System Study Section.

Date: June 20–21, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Nataliya Gordiyenko, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, 301.435.1265, *gordiyenkon@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Cancer Biomarkers Study Section.

Date: June 20, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Lawrence Ka-Yun Ng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301–357–9318, *ngkl@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Mechanisms of Emotion, Stress and Health Study Section.

Date: June 20–21, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Baltimore Marriott Inner Harbor at Camden Yards, 110 South Eutaw Street, Baltimore, MD 21201.

Contact Person: Maribeth Champoux, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 594–3163, *champoum@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Health Services Organization and Delivery Study Section.

Date: June 20–21, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Jacinta Bronte-Tinkew, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3164, MSC 7770, Bethesda, MD 20892, (301) 806–0009, *brontetinkewjm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR15–359: Biomarker Studies for Diagnosing Alzheimer's Disease and Predicting Progression.

Date: June 20, 2016.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Paula Elyse Schauwecker, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5211, Bethesda, MD 20892, *schauweckerpe@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Somatosensory and Chemosensory Systems Study Section.

Date: June 21–22, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: M. Catherine Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, 301–435–1766, *bennettc3@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Molecular and Integrative Signal Transduction Study Section.

Date: June 21–22, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Raya Mandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MSC 7840, Bethesda, MD 20892, (301) 402–8228, *rayam@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR15–326: Imaging—Science Track Award for Research Transition.

Date: June 21, 2016.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Yvonne Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, 301–379–3793, *bennetty@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 13, 2016.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–11772 Filed 5–18–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Instrumentation and Systems Development Study Section.

Date: June 7–8, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kathryn Kalasinsky, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158 MSC 7806, Bethesda, MD 20892, 301–402–1074, *kalasinskyks@mail.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurotoxicology and Alcohol Study Section.

Date: June 13, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle NW., Washington, DC 20005

Contact Person: Jana Drgonova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 5213, Bethesda, MD 20892, *jdrgonova@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Non-HIV Microbial Vaccines.

Date: June 14, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Andrea Keane-Myers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, Bethesda, MD 20892, 301–435–1221, *andrea.keane-myers@nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Mechanisms of Sensory, Perceptual, and Cognitive Processes Study Section.

Date: June 14–15, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle NW., Washington, DC 20005.

Contact Person: Kirk Thompson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *kgt@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–15–

356: Major Opportunities for Research in Epidemiology of Alzheimer's Disease and Cognitive Resilience (R01).

Date: June 14, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: George Vogler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3140, MSC 7770, Bethesda, MD 20892, (301) 237–2693, *voglergp@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Surgery, Anesthesiology and Trauma Study Section.

Date: June 15–16, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Austin, 500 E 4th St, Austin, TX.

Contact Person: Weihua Luo, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170, *luow@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Drug Discovery and Molecular Pharmacology Study Section.

Date: June 16–17, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Hotel, 1500 New Hampshire Avenue NW., Washington, DC 20036.

Contact Person: Jeffrey Smiley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–594–7945, *smileyja@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Biomaterials and Biointerfaces Study Section.

Date: June 16–17, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: Joseph D Mosca, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 408–9465, *moscajos@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Nursing and Related Clinical Sciences Study Section.

Date: June 16–17, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Sung Sug Yoon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, Bethesda, MD 20892, *sungsug.yoon@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 12, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–11771 Filed 5–18–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive Patent License: Development and Commercialization of Adeno-Virus Based Cancer Immunotherapy

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in the following Patents and Patent Applications to Etubics Corporation ("Etubics") located in San Francisco, California, USA.

Intellectual Property

United States Provisional Patent Application No. 60/904,236 filed February 28, 2007, titled "Brachyury Polypeptides and Methods of Use" [HHS Reference No. E–074–2007/0–US–01];

International Patent Application No. PCT/US2008/055185filed February 28, 2008 titled "Brachyury Polypeptides and Methods of Use" [HHS Reference No. E–074–2007/0–PCT–02]; National Stage Applications and issued patents, in the US, EP, CA, AU, JP, HK, and all continuations applications, divisional applications and foreign counterpart applications and patents claiming priority to the provisional application no. 60/904,236,

United States Provisional Patent Application No. 61/701,525, filed September 14, 2014, titled "Brachyury Protein, Non-Poxvirus Non-Yeast Vectors Encoding Brachyury Protein, And Their Use" [HHS Reference No. E–055–2011/0–US–01];

International Patent Application No. PCT/US2013/0059737 filed September 13, 2012 titled "Brachyury Protein, Non-Poxvirus Non-Yeast Vectors Encoding Brachyury Protein, and Their Use" [HHS Reference No. E–055–2011/0–PCT–02]; National Stage Applications and issued patents, in the U.S., EP and all continuations applications, divisional applications and foreign counterpart applications and patents claiming priority to the provisional application no. 60/701,525.

U.S. Provisional Application No. 62/200,438 filed August 3, 2015 titled "Brachyury Deletion Mutants, Non-Yeast Vectors Encoding Brachyury Deletion Mutants, and Their Use" [HHS Reference No. E–244–2015/0–US–01] and continuation applications, divisional applications and foreign counterpart applications claiming priority to the U.S. provisional application no. 62/200,438.

U.S. Patent Application No. 61/582,723 filed January 3, 2012 entitled "Native and Agonist CTL Epitopes of The MUC–1 Tumor Antigen" [HHS Reference No. E–001–2012/0–US–01] as well as all continuation and divisional applications and foreign issued patents and patent applications claiming priority to the U.S. provisional application no. 61/582,723.

U.S. Patent Application No. 61/894,482 filed October 23, 2013 entitled "Identification and Characterization of HLA–A24 Agonist Epitopes of MUC1-Oncoprotein" [HHS Reference No. E–520–2013/0–US–01] as well as all continuation and divisional applications and foreign issued patents and patent applications claiming priority to the US provisional application no. 61/894,482.

U.S. Patent No. 6,756,038 issued June, 29 2004 as well as issued and pending foreign counterparts [HHS Ref. No. E–099–1996/0–US–07];

U.S. Patent No. 7,723,096 issued May 25, 2010 as well as continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–099–1996/0–US–08];

Europe Patent No. 1017810 (HHS Ref. No. E–099–1996/0–EP–05, and all European contracting states in which this patent is validated, including: German Patent No. 69824023.5 (HHS Ref. No. E–099–1996/0–DE–09); France Patent No. 1017810 (HHS Ref. No. E–099–1996/0–FR–10); Great Britain Patent No. 1017810 (HHS Ref. No. E–099–1996/0–GB–11); Italy Patent No. 1017810 (HHS Ref. No. E–099–1996/0–IT–12); Spain Patent No. 2217585) (HHS Ref. No. E–099–1996/0–ES–13);

Switzerland Patent Application No. 98948429.0 (now Switzerland Patent No. 1017810) (HHS Ref. No. E–099–1996/0–CH–14); Belgium Patent Application No. 98948429.0 (now Belgium Patent No. 1017810) (HHS Ref. No. E–099–1996/0–BE–15); Ireland Patent Application No. 98948429.0 (now Ireland Patent No. 1017810) (HHS Ref. No. E–099–1996/0–IE–16); and all continuations and divisional applications claiming priority to any of the above;

Europe Patent Application No. 04011673.3 (now EP Patent No. 1447414) (HHS Ref. No. E–099–1996/0–EP–17), and all European contracting states in which this patent is validated, including: Austria Patent Application No. 04011673.3 (now Austria Patent No. 1447414) (HHS Ref. No. E–099–1996/0–AT–28); Belgium Patent Application No. 04011673.3 (now Belgium Patent No. 1447414) (HHS Ref. No. E–099–1996/0–BE–29); Cyprus Patent Application No. 04011673.3 (now Cyprus Patent No. 1447414) (HHS Ref. No. E–099–1996/0–CY–31); Denmark Patent Application No. 04011673.3 (now Denmark Patent No. 1447414) (HHS Ref. No. E–099–1996/0–DK–41); Finland Patent Application No. 04011673.3 (now Finland Patent No. 1447414) (HHS Ref. No. E–099–1996/0–FI–33); France Patent Application No. 04011673.3 (now France Patent No. 1447414) (HHS Ref. No. E–099–1996/0–FR–42); Germany Patent Application No. 04011673.3 (now Germany Patent No. 69837896) (HHS Ref. No. E–099–1996/0–DE–40); Great Britain Patent Application No. 04011673.3 (now Great Britain Patent No. 1447414) (HHS Ref. No. E–099–1996/0–GB–43); Greece Patent Application No. 04011673.3 (now Greece Patent No. 1447414) (HHS Ref. No. E–099–1996/0–GR–34); Ireland Patent Application No. 04011673.3 (now Ireland Patent No. 1447414) (HHS Ref. No. E–099–1996/0–IE–35); Italy Patent Application No. 04011673.3 (now Italy Patent No. 1447414) (HHS Ref. No. E–099–1996/0–IT–36); Luxembourg Patent Application No. 04011673.3 (now Luxembourg Patent No. 1447414) (HHS Ref. No. E–099–1996/0–LU–44); Monaco Patent Application No. 04011673.3 (now Monaco Patent No. 1447414) (HHS Ref. No. E–099–1996/0–MC–45); Netherlands Patent Application No. 04011673.3 (now Netherlands Patent No. 1447414) (HHS Ref. No. E–099–1996/0–NL–46); Portugal Patent Application No. 04011673.3 (now Portugal Patent No. 1447414) (HHS Ref. No. E–099–1996/0–PT–37); Spain Patent Application No. 04011673.3 (now Spain Patent No. 2286530) (HHS Ref. No. E–099–1996/0–ES–32); Sweden Patent Application No. 04011673.3 (now Sweden Patent No. 1447414) (HHS Ref. No. E–099–1996/0–SE–38); Switzerland Patent Application No. 04011673.3 (now Switzerland Patent No. 1447414) (HHS Ref. No. E–099–1996/0–CH–30); and all continuations and divisional applications claiming priority to any of the above;

Japan Patent Application No. 2000–516030 (now JP Patent No. 4291508) (HHS Ref. No. E–099–1996/0–JP–06), and all continuations and divisional applications claiming priority to this application;

Australia Patent No. 745863 (HHS Ref. No. E–099–1996/0–AU–03), and all continuations and divisional applications claiming priority to this application; Canada Patent No. 2308127 (HHS Ref. No. E–099–1996/0–CA–04), and all continuations and divisional applications claiming priority to this application;

U.S. Patent Application No. 10/579,025 filed May 11, 2006 as well as all continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–087–2005/0–US–03];

U.S. Patent Application No. 10/579,007 filed May 11, 2006 as well as all continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–088–2005/0–US–03];

U.S. Patent No. 7,118,738 issued October 10, 2006 as well as all continuations and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–154–1998/0–US–07];

U.S. Patent Application Nos. 08/686,280 filed July 25, 1996 as well as all issued and pending foreign counterparts [HHS Ref. No. E–259–1994/3–US–01];

U.S. Patent No. 7,410,644 issued August 12, 2008 as well as all continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–259–1994/3–US–08];

The patent rights in these inventions have been assigned and/or exclusively licensed to the government of the United States of America. The prospective exclusive license territory may be worldwide and the field of use may be limited to the use of Licensed Patent Rights for the following: "The development and commercialization of a therapeutic cancer vaccine specifically using Adeno-viral vectors." For avoidance of doubt, the field of use specifically excludes other viral vectors including but not limited to pox virus vectors, yeast based vectors and other adjuvants and vectors that are not adeno-viral vectors.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before June 3, 2016 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated exclusive license should be directed to: Sabarni K. Chatterjee, Ph.D., M.B.A. Senior Licensing and Patenting Manager, NCI Technology Transfer Center, 9609 Medical Center Drive, RM 1E530 MSC 9702, Bethesda, MD 20892–9702 (for business mail), Rockville, MD 20850–9702 Telephone: (240)-276–5530; Facsimile: (240)-276–5504E-mail: *chatterjeesa@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: This invention concerns Brachyury, a master transcription factor that governs the epithelial-mesenchymal transition, was shown to be significantly overexpressed in primary and metastasizing tumors relative to normal human tissues. Stimulation of T cells with the Brachyury peptide promoted a robust immune response and the targeted lysis of invasive tumor cells. Brachyury overexpression has been demonstrated in a range of human tumors (breast, lung, colon and prostate, among others) suggesting that an immunotherapeutic product derived from this technology would be broadly applicable for the treatment of cancer.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7.

Complete applications for a license in the prospective field of use that are filed in response to this notice will be treated as objections to the grant of the contemplated Exclusive Patent License Agreement. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the *Freedom of Information Act,* 5 U.S.C. 552.

Dated: May 13, 2016.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2016–11770 Filed 5–18–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive Start-up Option License: Anti-TNF Induced Apoptosis (ATIA) Diagnostic Markers and Therapies

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR part 404.7(a)(1)(i), that the National Cancer Institute (NCI), National Institutes of Health, Department of Health and Human Services, is contemplating the grant of a Start-Up Exclusive Option License Agreement to IntelliPanel Medical, LLC, a company having a place of business in Philadelphia, PA, to practice the inventions embodied in the following patent applications:

Intellectual Property

U.S. Patent Application No. 13/322,863, titled "Anti-TNF Induced Apoptosis (ATIA) Diagnostic Markers and Therapies" filed 28 November 2011 (HHS Ref. No.: E–178–2009/0–US–03); PCT Application No. PCT/US2010/36394, titled "Anti-TNF Induced Apoptosis (ATIA) Diagnostic Markers and Therapies" filed 27 May 2010 (HHS Ref. No.: E–178–2009/0–PCT–02); and U.S. Provisional Patent Application No. 61/182,072, titled "Anti-TNF Induced Apoptosis (ATIA) Diagnostic Markers and Therapies" filed May 28, 2009 (HHS Ref. No.: E–178–2009/0–US–01).

The patent rights in these inventions have been assigned and/or exclusively licensed to the government of the United States of America.

The territory of the prospective Start-Up Exclusive Option License Agreement may be worldwide, and the field of use may be limited to "Anti-TNF Induced Apoptosis (ATIA) for the diagnosis, monitoring, and treatment of Glioblastoma Multiforme (GBM)."

Upon the expiration or termination of the Start-up Exclusive Option License Agreement, IntelliPanel Medical, LLC will have the exclusive right to execute a Start-Up Exclusive Patent License Agreement which will supersede and replace the Start-up Exclusive Option License Agreement, with no greater field of use and territory than granted in the Start-up Exclusive Option License Agreement.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before June 3, 2016 will be considered.

ADDRESSES: Requests for copies of the patent application(s), inquiries, comments, and other materials relating to the contemplated Start-Up Exclusive Option License Agreement should be directed to: Jaime M. Greene, M.S., Senior Licensing and Patenting Manager, Technology Transfer Center, National Cancer Institute, 9609 Medical Center Drive, Rockville, MD 20850; telephone: 240–276–6633; fax: 240–276–5504; email: *greenejaime@mail.nih.gov.* A signed confidentiality nondisclosure agreement will be required to receive copies of any patent applications that have not been published or issued by the United States Patent and Trademark Office or the World Intellectual Property Organization.

SUPPLEMENTARY INFORMATION: This technology concerns the Anti-TNF Induced Apoptosis (ATIA) protein along with methods of diagnosing and treating neoplasia by blocking ATIA. This technology may be useful for the development of diagnostics and therapeutics for brain cancers including GBM.

The prospective Start-Up Exclusive Option License Agreement is being considered under the small business initiative launched on October 1, 2011 and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective Start-Up Exclusive Option License Agreement may be granted unless the NIH receives written evidence and argument, within fifteen (15) days from the date of this published notice, that establishes that the grant of the contemplated Start-Up Exclusive Option License Agreement would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7.

Complete applications for a license in the prospective field of use that are filed in response to this notice will be treated as objections to the grant of the contemplated Start-Up Exclusive Option License Agreement. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the *Freedom of Information Act,* 5 U.S.C. 552.

Dated: May 12, 2016.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2016–11769 Filed 5–18–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

United States Secret Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of proposed information collection.

SUMMARY: The U.S. Department of Homeland Security, Office of the Chief Information Officer, invites comments on the proposed information collection request as required by the Paperwork Reduction Act of 1995. Currently, the U.S. Secret Service, within the U.S. Department of Homeland Security, is soliciting comments concerning Secret Service Form (SSF) 3237, U.S. Secret Service Facility Access Request.

DATES: Interested persons are invited to submit comments on or before July 18, 2016.

ADDRESSES: Direct all written comments to: Communications Center (SMD), Attn: ATSAIC Jonathan Bryant, 245 Murray Lane SW., Building T5, Washington, DC 20223, (202) 406–6658. Individuals who use a telecommunications device for the deaf (TDD) may either call the Federal Information Relay Service (FIRS) at 1–800–877–8339 or call directly (TTY) 202–406–5390.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to: Communications Center (SCD), Attn: ATSAIC Jonathan Bryant, 245 Murray Lane SW., Building T5, Washington, DC 20223. Telephone number: 202–406–6658.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires each Federal agency to provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The notice for this proposed information collection contains the following: (1) The name of the component of the U.S. Department of Homeland Security; (2) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (3) OMB Control Number, if applicable; (4) Title; (5) Summary of the collection; (6) Description of the need for, and proposed use of, the information; (7) Respondents and frequency of collection; and (8) Reporting and/or Recordkeeping burden.

The Department of Homeland Security invites public comment.

The Department of Homeland Security is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, including whether the information will have practical utility; (2) Is the estimate of burden for this information collection accurate; (3) How might the Department enhance the quality, utility, and clarity of the information to be collected; and (4) How might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Abstract: Respondents are primarily Secret Service contractor personnel or non-Secret Service Government employees on official business that require access to Secret Service controlled facilities in performance of official duties. These individuals, if approved for access, will require escorted, unescorted, and staff-like access to Secret Service-controlled facilities. Responses to questions on SSF 3237 yield information necessary for the adjudication of eligibility for facility access.

United States Secret Service

Title: U.S. Secret Service Facility Access Request.

OMB Number: 1620–0002.

Form Number: SSF 3237.

Frequency: Occasionally.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or Households/Business.

Estimated Number of Respondents: 5000.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1250 hours.

Estimated Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): None.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 16, 2016.

Nancy House,

Acting Chief—Policy Analysis and Organizational Development Branch, U.S. Secret Service, Department of Homeland Security.

[FR Doc. 2016–11827 Filed 5–18–16; 8:45 am]

BILLING CODE 4810–42–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0099]

Agency Information Collection Activities: Application for T Nonimmigrant Status; Application for Immediate Family Member of T–1 Recipient; and Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, Form I–914 and Supplements A and B, Extension, Without Change, of a Currently Approved Collection.

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on March 3, 2016 at 81 FR 11288, allowing for a 60-day public comment period. USCIS did not receive any comment in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 20, 2016. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806 (This is not a toll-free number). All submissions received must include the agency name and the OMB Control Number 1615–0099.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Acting Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2006–0099 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for T Nonimmigrant Status; Application for Immediate Family Member of T–1 Recipient; and Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–914 and Supplements A and B; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–914 permits victims of severe forms of trafficking and their immediate family members to demonstrate that they qualify for temporary nonimmigrant status pursuant to the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), and to receive temporary immigration benefits.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I–914, 1,062 responses at 2 hours and 15 minutes (2.25 hours) per response; Supplement A, 1,162 responses at 1 hour per response; Supplement B, 250 responses at 30 minutes (.50 hours) per response. Biometric processing 2,224 respondents requiring Biometric Processing at an estimated 1 hour and 10 minutes (1.17 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 6,278 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* There is no estimated annual cost burden associated with this collection of information.

Dated: May 13, 2016.

Samantha Deshommes,

Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2016–11782 Filed 5–18–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–R–2016–N088; FXRS126109HD000–167–FF09R23000]

Proposed Information Collection; Revealing Opportunities for Local-Level Stakeholder Engagement and Social Science Inquiry in Landscape Conservation Design

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by July 18, 2016.

ADDRESSES: Send your comments on the IC to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or *hope_grey@fws.gov* (email). Please include "1018–Landscape Conservation Design (LCD)" in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

We have entered into a cooperative agreement with Cornell University to study the role of local stakeholder engagement and social data integration in Landscape Conservation Design (LCD) planning and implementation processes. Promoting ecosystem-level conservation based on LCD will rely on engaging local stakeholders—meaning local community members and locally based interest groups potentially impacted by conservation actions—in conservation design, planning, and implementation processes. To date, no systematic assessment of local stakeholders' role in LCD has been conducted. Lacking such assessment, questions remain as to what, when, and where social data (related to stakeholders' values, interests, and knowledge) and public engagement (the direct participation of stakeholders in information sharing and decisionmaking) are most valuable in LCD processes. Information gathered in this study will provide essential, non-duplicative data and insights for ongoing and future LCD efforts. In addition to literature review and participant observation, this study will employ a multiple case study approach focused on three LCD efforts. We will conduct semi-structured interviews of 90 non-Federal LCD partners and local stakeholders to ascertain how LCD efforts have attempted to integrate social information, how these efforts have worked, and how they might be improved under varying social-ecological conditions. Based on case study findings, Cornell researchers will then develop and implement a survey instrument, which will be sent to 1,000 local stakeholders within one LCD case study area. The survey will solicit information concerning (1) local stakeholders' relationships with landscapes identified for conservation, (2) stakeholders' interest in engagement during various stages of LCD, (3) stakeholder values and interests that might be represented in conservation design processes and products, and (4) local social considerations that might help facilitate the translation of LCD to publicly supported conservation plans and actions.

II. Data

OMB Control Number: 1018–XXXX.

Title: Revealing Opportunities for Local-Level Stakeholder Engagement and Social Science Inquiry in Landscape Conservation Design.

Service Form Number: None.

Type of Request: Request for a new OMB control number.

Description of Respondents: Federal, State, and municipal government representatives, and individuals.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Activity	Number of responses	Completion time per response (minutes)	Total annual burden hours (minutes)
Semi-structured Interviews	90	70	105
Initial Contact for Survey	1,000	5	83
Follow-Up Material Review for Survey	750	5	63
Complete Survey	600	20	200

Activity	Number of responses	Completion time per response (minutes)	Total annual burden hours (minutes)
Follow-Up Interviews with Nonrespondents	80	5	7
TOTALS	2,520	....	458

Estimated Annual Nonhour Burden Cost: None.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 13, 2016.

Tina A. Campbell,

Chief, Division of Policy, Performance, and Management Programs, U.S. Fish and Wildlife Service.

[FR Doc. 2016–11762 Filed 5–18–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–R–2016–N073; FXRS1261030000–167–FF03R02000]

Glacial Ridge National Wildlife Refuge, Polk County, Minnesota; Draft Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan (CCP) and environmental assessment (EA) for the Glacial Ridge National Wildlife Refuge (refuge, NWR) for public review and comment. In this draft CCP/EA we describe how we propose to manage the refuge for the next 15 years.

DATES: To ensure consideration, we must receive your written comments by June 20, 2016. We will hold an open house–style meeting during the comment period to receive comments and provide information on the draft plan. In addition, we will use special mailings, newspaper articles, internet postings, and other media announcements to inform people of opportunities for input.

ADDRESSES: Send your comments or requests for more information by any of the following methods:

- *Email: r3planning@fws.gov.* Include "Glacial Ridge Draft CCP/EA" in the subject line of the message.
- *Fax:* Attention: Refuge Manager, Glacial Ridge NWR, 218–687–2225.
- *U.S. Mail:* Attention: Refuge Manager, Glacial Ridge NWR, 17788 349th St. SE., Erskine, MN 56535.
- *In-Person Drop Off:* You may drop off comments during regular business hours at the above addresses.

You will find the draft CCP/EA, as well as information about the planning process and a summary of the CCP, on the planning Web site at *http://www.fws.gov/midwest/planning/glacialridge/index.html.*

FOR FURTHER INFORMATION CONTACT: Gregg Knutsen, 218–687–2229 x16.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Glacial Ridge National Wildlife Refuge, which we began by publishing a notice of intent in the **Federal Register** (78 FR 3909) on January 17, 2013. For more about the initial process and the history of this refuge, see that notice.

Background

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Administration Act), requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the NWRS was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the NWRS mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the NWRS.

Additional Information

The draft CCP/EA may be found at *http://www.fws.gov/midwest/planning/glacialridge/index.html.* That document incorporates an EA, prepared in accordance with the National Environmental Policy Act (NEPA) (43 U.S.C. 4321 *et seq.*). The draft CCP/EA includes detailed information about the planning process, refuge, issues, and management alternatives considered and proposed. The EA includes discussions of three alternative refuge management options. The Service's preferred alternative is reflected in the draft CCP.

The alternatives analyzed in detail include:

- Alternative A: Current Management (No Action)—This alternative reflects the current management direction of Glacial Ridge NWR. It provides the baseline against which to compare other alternatives. For NEPA purposes, this is referred to as the "No Action" alternative.
- Alternative B: Focused Habitat Management (Preferred Alternative)—Under this alternative, refuge management actions would approximate ecological processes that maintained native habitats prior to European settlement, emphasizing the use of multiple habitat disturbance regimes (*e.g.*, fire, grazing, mowing). These actions would maintain and increase the diversity of native vegetation and wildlife communities that mimic pre-settlement conditions. Management activities would be "focused" via a refuge prioritization effort to maximize the intended impacts on priority units, given reduced refuge staff and funding. Public use opportunities would continue with minimal changes. Staff time and funding would focus on improving opportunities for self-guided interpretation of refuge habitats and wildlife using existing infrastructure.
- Alternative C: Woody Vegetation Reduction Focus—The focus of this alternative would be the reduction of invasive woody vegetation cover (*e.g.*, willow, aspen) across the refuge landscape during the lifespan of this CCP. The extent of woody cover is increasing due to a lack of regular vegetative disturbance and other factors. Management actions would focus on refuge units exhibiting woody vegetation cover that exceeds the amount found prior to European settlement. Public use opportunities would continue with minimal change. Staff time and funding would focus on improving opportunities for self-guided interpretation of refuge habitats and wildlife using existing infrastructure.

Public Involvement

We will give the public an opportunity to provide input at a public meeting. You can obtain the schedule from the address or Web site listed in this notice (see **ADDRESSES**). You may also submit comments anytime during the comment period.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Charles M. Wooley,

Acting Regional Director.

[FR Doc. 2016–11803 Filed 5–18–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167 A2100DD/AAKC001030/A0A501010.999900]

Land Acquisitions; Cloverdale Rancheria of Pomo Indians of California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final agency determination.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire approximately 61.83 acres, more or less, of land in trust for the Cloverdale Rancheria of Pomo Indians, California, for gaming and other purposes on April 29, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Bureau of Indian Affairs, MS–3657 MIB, 1849 C Street NW., Washington, DC 20240; telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1, and is published to comply with the requirements of 25 CFR 151.12(c)(2)(ii) that notice of the decision to acquire land in trust be promptly provided in the **Federal Register**.

On April 29, 2016, the Assistant Secretary—Indian Affairs issued a decision to accept approximately 61.83 acres, more or less, of land into trust for the Cloverdale Rancheria of Pomo Indians of California (Tribe) under the authority of the Indian Reorganization Act of 1934, 25 U.S.C. 465. The Assistant Secretary—Indian Affairs determined that the Tribe's request also meets the requirements of the Indian Gaming Regulatory Act's "restored lands" exception, 25 U.S.C. 2719(b)(1)(B)(iii), to the general prohibition contained in 25 U.S.C. 2719(a) on gaming on lands acquired in trust after October 17, 1988.

The Assistant Secretary—Indian Affairs, on behalf of the Secretary of the Interior, will immediately acquire title in the name of the United States of America in trust for the Cloverdale Rancheria of Pomo Indians, California.

Legal Description

The 61.83 acres, more or less, are located in the County of Sonoma, State of California, and are described as follows:

APN: 116–310–039–000, 116–310–035–000 and 116–310–040–000

Parcel One

Commencing at a point in the center of the main public road leading from Cloverdale to Healdsburg, at the southwesterly corner of the land of Allegrini, and which said point of beginning is the northwesterly corner of the land described in that certain deed dated February 16, 1916 executed by Mary M. Markell to Fred J. Daniels and recorded February 24, 1917, in liber 350 of deeds, at page 101, Sonoma County records, reference to which deed is hereby expressly made; running thence north 47°28′ East, along the southerly boundary line of the land of said Allegrini a distance of 18.03 chains to the southeast corner of said Allegrini property being the point of beginning of the property hereby conveyed; thence continuing north 47°28′ East along the southerly line of the land of Lile crossing the right of way of the Northwestern Pacific Railway Company, a distance of 35.74 chains to a point on the gravel bar on the Russian River and being the northeasterly corner of the land so conveyed as aforesaid by said Mary M. Markell to Fred J. Daniels; thence south 36°36′ East, on said gravel bar 9.78 chains; thence south 47°28′ West, being parallel with the northerly line of said lands conveyed by said Mary M. Markell to Fred J. Daniels a distance of 35.61 chains; thence North 37°19′ West, a distance 9.77 chains to the place of beginning.

Excepting therefrom 4.50 acres as conveyed to the city of Cloverdale by deed recorded July 18, 1940 in book 505 of official records, at page 358, Serial No. B–21341.

Also excepting therefrom that portion conveyed to the State of California by deed recorded November 7, 1974, in book 2910 of official records, at page 437, Instrument No. P–28163, Sonoma County Records.

Also excepting therefrom that portion of the above described property conveyed in deed recorded June 18, 1973, in book 2773 of official records, at page 384, Instrument No. N–42644, Sonoma County Records.

Also saving and excepting from the above described parcel of land any portion lying northeasterly of the southwesterly line of the Northwestern Pacific Railroad.

Parcel Two

Beginning at an iron pipe 2-inches in diameter, 4 feet long, standing on the east side of the railroad about one mile south of the town of Cloverdale, Sonoma County, State of California, on the dividing line between the lands of Markell and Lile ranches, from which a white oak tree 10 inches in diameter bears South 58°30′ East 85 links distant marked D.L.J.S.O.bt.; thence North 47°28′ East 13.12 chains; thence North 30°30′ West 2.40 chains; thence North 3°30′ East 6.10 chains; thence South 47°20′ West 39.90 chains to the line of the Aligrini ranch; thence South 37°10′ East 6.60 chains to the line of Markell ranch; thence North 47°28′ East 22.45 chains to the place of beginning, the whole distance of the east line is 36.12 chains.

Magnetic variation of needle north 18° east.

Excepting therefrom any portion of the above described parcel of land lying northeasterly of the southwesterly line of the Northwestern Pacific Railroad.

Also excepting therefrom all that portion lying westerly of the easterly line of that portion described in the deed to the State of California recorded on August 13, 1993, Instrument No. 1993 0101800, Sonoma County Records.

Parcel Three

Intentionally Deleted.

Parcel Four

Intentionally Deleted.

Parcel Five

Beginning at a point on the east side of the highway leading from Cloverdale to Healdsburg, at the junction of dry creek road, about one mile south of the town of Cloverdale, marked by an iron pipe, one inch in diameter, four feet long, set in the ground, from which Furber Peak bears South 60°15′ West, Geyser Peak bears South 78°30′ East; thence South 20°30′ West, 58 links to an iron pipe, one inch in diameter, four feet long, set in the ground with six inches above the surface, at the edge of a telegraph pole, and which is the northwest corner of the Allegrini ranch; thence North 55°45′ East, along the line of said Allegrini ranch 11.33 chains; thence North 59° East, 1.75 chains to the west bank of a creek; thence North 37°30′ East, 52 links to the east bank of said creek; thence North 60°15′ East, 3.60 chains to the northeast corner of said Allegrini ranch; thence South 37°10′ East, 9.90 chains along the easterly line of said Allegrini ranch to the northwesterly corner of lands now owned by Joseph A. Lile; thence North 47°20′ East, 39.90 chains (crossing the Northwestern Pacific Railroad right of way and Russian River) to the northeast corner of said lands of Joseph A. Lile; thence North 3°30′ East, up the gravel bar 6.75 chains (to the northeast corner of the tract herein described); thence South 57°30′ West, 5.66 chains to the west bank of Russian River; thence on the last named course South 57°30′ West 16.87 chains; thence South 61°45′ West, up the creek 5.75 chains to the east end to the railroad concrete bridge; thence South 66°45′ West, 1.55 chains to the west end of said bridge; thence meandering up the creek as follows: South 48°15′ West, 1. chain; thence South 3°15′ East, 1.03 chains; thence South 89° West, 1.52 chains; thence North 55° West, 79 links; thence South 78°30′ West, 1.38 chains; thence South 25°30′ east, 81 links; thence South 25°30′ West, 1.10 chains; thence South 81°30′ West, 1.90 chains; thence South 41°50′ West, 1.15 chains; thence South 51° East 1.34 chains; thence South 22° East, 1.62 chains; thence South 61°15′ West, 1.72 chains; thence North 65° West, 2 chains; thence South 43° West, 74 links; thence South 2° West, 60 links; thence South 62° West 1.50 chains; thence South 23°15′ East, 69 links; thence South 78° West, 84 links; thence South 55° West, 2.11 chains; thence South 29°30′ West, 83 links; thence South 56°45′ West, 83 links; thence South 88° West, 71 links; thence South 3°30′ West, 62 links; thence South 54° West, 12.60 chains to the place of beginning. being the northerly portion of the lands and premises and described in the deed dated March 30, 1909, made by George F. Lile to said Sarah C. Lile, and recorded August 11, 1920, in book 390 of deeds, page 140, Sonoma County Records.

Excepting that parcel of land conveyed by the San Francisco Bank, a corporation, to Albert E. Ottoboni and Mary A. Ottoboni, his wife, by deed dated October 14, 1933, and recorded October 31, 1933, in book 348 of official records, page 407, under recorder's Serial No. A–42492, Sonoma county records.

Also excepting therefrom that portion contained in the decree quieting title in favor of Louis Puecinelli, dated February 5, 1926, and recorded June 29, 1943, in book 582 of official records, page 243, under recorder's Serial No. B–62145, Sonoma County Records.

Also excepting therefrom that portion conveyed by Bernard A. Lile, also known as B.A. Lile and Charlette E. Lile, his wife to Herbert Becklund and Eleanor Becklund, his wife, be deed dated October 9, 1947, and recorded October 27, 1947, recorder's Serial No. C–54139, book 748, page 340 Sonoma County Records.

Also excepting any portion of the above described parcel of land lying northeasterly of the southwesterly line of the Northwestern Pacific Railroad.

Also excepting therefrom all that portion which lies westerly of the easterly line of parcel 1 as described in the deed to the state of California recorded June 9, 1993 under Instrument No. 1993 0071125, Sonoma County Records.

Parcel Six

An easement for a private at-grade roadway used exclusively for access, and ingress and egress upon the terms and provisions as set forth and described in that certain "easement agreement (private at-grade crossing of railroad line)" executed by and between North Coast Railroad authority, a legislatively created State Agency and Amonos, LLC, a Delaware limited liability company and Sirrah, LLC, a Delaware limited liability company recorded October 16, 2012 as Instrument No. 2012–102659, Sonoma County Records.

Parcel Seven

An easement for a below grade utility crossing used for sewer, potable water, treated water for irrigation, natural gas, power, electricity and all types of communication cables and lines upon the terms and provisions as set forth and described in that certain "easement agreement (below-grade utility crossing of railroad line)" executed by and between north coast railroad authority, a legislatively created state agency and Amonos, LLC, a Delaware limited liability company and Sirrah, LLC, a Delaware limited liability company recorded October 16, 2012 as Instrument No. 2012–102658, Sonoma County Records.

APN: 116–310–005–000 (Affects Parcel Two) and 116–310–079–000 (Affects Parcel One)

Parcel One: APN: 116–310–079–000 (Affects Parcel One)

Being a portion of the Musalacon rancho and a portion of the lands conveyed to Joseph A. Lile by deed recorded May 11, 1929, in book 226 of official records, page 464, Serial No. 92289, Sonoma County Records, and by deed recorded September 17, 1919, in book 375 of deeds, page 20, Sonoma County Records, and more particularly described as follows: Commencing at a point on the west side of a concrete bridge on a railroad over Porterfield Creek between the lands of the above-mentioned Joseph A. Lile and the lands of Frank Chiocciora as conveyed to him by deed dated March 01, 1948, and recorded April 30, 1948, under Serial No. C–66364, Sonoma County Records, thence crossing said railroad North 66°45′ East 1.55 chains to the east side of said bridge and railroad and the point of beginning of the lands to the herein described; thence, from said point of beginning along the line as established by that boundary line agreement between Kate E. Leist and George E. Lile recorded July 09, 1917, in book 35 of maps, page 6, Sonoma County Records, North 61°45′ East, 5.75 chains to point; thence continuing along said line north 57°30′ East, 22.62 chains to a point, said point being the most northerly corner of the Lile ranch as shown in book 35 of maps, page 6; thence from said point and along the above mentioned boundary line agreement between George E. Lile and Melville and Ingram South 3°30′ West, a distance of 6.75 chains to the most northerly corner of the lands conveyed to Joseph A. Lile by deed dated august 13, 1919, and recorded September 17, 1919, in book 375 of deeds, page 20, Sonoma County Records; thence continuing along said boundary line agreement South 3°30′ West, a distance of 6.10 chains to a point; thence South 36°30′ East a distance of 2.40 chains to the northerly corner of the former Markell ranch now owned by Clifford Lile and wife, by deed recorded December 07, 1943, under Serial No. B–70019, Sonoma County Records; thence along the line between Joseph A. Lile and Clifford Lile South 47°28′ West a distance of 13.12 chains, more or less, to the easterly line of the railroad; thence northerly along the easterly line of said railroad to the point of beginning.

Excepting therefrom all that portion granted from the San Francisco Bank, a corporation to Albert E. Ottoboni and Mary A. Ottoboni, by deed dated October 14, 1933, and recorded October 31, 1933, in book 348 of official records, page 407, Serial No. A–42492, Sonoma County Records.

Excepting therefrom all that portion granted from Joseph A. Lile and Belle I. Lile to Carvel B. Case, by deed dated April 07, 1954, and recorded April 23, 1954, in book 1268 of official records, page 310, Serial No. E–19321, Sonoma County Records.

Excepting therefrom that portion conveyed to the State of California by deeds recorded June 11, 1992, as Document Nos. 92–69810 and 92–69811, Sonoma County Records.

Excepting therefrom that portion condemned to the city of Cloverdale by final order in condemnation-action in eminent domain, recorded December 13, 2010, as Instrument No. 2010113034 of official records, described as follows:

Beginning at a point on the northerly line of the lands of Sirrah, LLC, a Delaware limited liability company, as recorded under Document Number 2008–040296, Sonoma County Records, from which point an old 1 inch iron pipe with nail bears S. 58°52′56″ W., 128.35 feet; thence from said point of beginning and continuing easterly along said northerly line, N. 58°52′56″ E., 1135.26 feet to the northeasterly corner of said lands; thence southerly and along the easterly line of said lands S. 05°01′20″ W., 499.52 feet, from which a ½ inch iron pipe with no tag bears S. 05°01′20″ W., 312.39 feet, said ½ inch iron pipe monument is accepted as the one shown on that certain "record of survey" as filed in book 634 of maps, page 42, Sonoma County Records; thence leaving said easterly line, and along a line that is approximately 1 foot southerly and parallel to an existing chain link fence, S. 84°31′00″ W., 932.44 feet, to the point of beginning.

Parcel Two: APN: 116–310–005–000 (Affects Parcel Two)

Being a portion of the Musalacon rancho and a portion of the lands conveyed to Clifford I. Lile and wife by deed recorded December 07, 1943, in book 600 of official records, page 8, recorder's Serial No. B–70019, Sonoma County Records, said portion being described as follows:

Beginning at a 2″ iron pipe monument marking the point of intersection of the northeasterly line of the right of way of the Northwestern Pacific Railway Company with the division line between said lands conveyed to Clifford Lile and wife and the lands of Joseph A. Lile and wife, and from which point a white oak tree 10″ in diameter and marked "d.l.j.s.o.bt", bears South 58°30′ East a distance of 85 links; thence from said point of beginning north 47°28′ East and along said division line 13.12 chains, more or less, to the common easterly corner of said lands of Clifford Lile and wife and Joseph A. Lile and wife; thence South 36°30′ East and along the easterly line of said lands conveyed to Clifford Lile and wife, 15.40 chains, more or less, to the southeasterly corner thereof; thence South 47°40′ West and along the southerly line of said lands 5.31 chains, more or less, to the most easterly corner of the 27.50 acre tract conveyed to the United States of America by deed recorded March 29, 1921 in book 298 of deeds, page 280, Sonoma County Records; thence north 59°15′ West and along the northeasterly line of said 27.50 acre tract 6.07- ½ chains, more or less, to the southeasterly line of said lands conveyed to Clifford Lile and wife; thence South 47°28′ West and along the southeasterly line of said lands of Lile, 3 chains, more or less, to the northeasterly line of the right of way for the Northwestern Pacific Railway Company; thence north 58°06′ 15″ West and along the northeasterly line of said right of way a distance of 10 chains, more or less, to the point of beginning.

Excepting from the above described parcel of land all that portion granted by Clifford I. Lile and wife to Carvel B. Case, by deed dated April 03, 1954, and recorded April 23, 1954, in book 1268 of official records, page 322, Serial No. E–19324, Sonoma County Records.

Parcel Three

A right of way 20 feet in width, for general road and utility purposes as described in deed to Clifford I. Lile and Mary A. Lile, his wife, and Isabella L. Rickard and Lester I. Rickard, her husband, recorded December 11, 1970, in book 2501 of official records, at page 692, Serial No. L–90137, Sonoma County Records.

Parcel Four

An easement for access to the Russian River in, over, along and across a 100 foot strip of land lying along and adjacent to the entire northeasterly boundary of parcel two hereinabove described as reserved by Clifford I. Lile and wife in the deed to Carvel B. Case dated April 03, 1954, and recorded April 23, 1954, in book 1268 of official records, page 322, Serial No. E–19324, Sonoma County Records.

Parcel Five

Non exclusive easements for access by pedestrians, vehicles and equipment as described in the grant of easement from Spight Properties II, LLC, a California limited liability company to Silverado Premium Properties, LLC, a Delaware limited liability company recorded March 21, 2003, as Document Number 2003–054446, Sonoma County Records.

Parcel Six

A non exclusive easement for ingress, egress, and roadway purposes to and from the public road known as Asti Road as described in the grant of easement from the city of Cloverdale to Sirrah, LLC, a Delaware limited liability company recorded November 5, 2010, as Instrument No. 2010096990, Sonoma County Records.

Parcel Seven

An easement for a private at-grade roadway used exclusively for access, and ingress and egress upon the terms and provisions as set forth and described in that certain "easement agreement (private at-grade crossing of railroad line)" executed by and between North Coast Railroad Authority, a legislatively created State Agency and Amonos, LLC, a Delaware limited liability company and Sirrah, LLC, a Delaware limited liability company recorded October 16, 2012, as Instrument No. 20120102659, Sonoma County Records.

Parcel Eight

An easement for a below grade utility crossing used for sewer, potable water, treated water for irrigation, natural gas, power, electricity and all types of communication cables and lines upon the terms and provisions as set forth and described in that certain "easement agreement (below-grade utility crossing of railroad line)" executed by and between north coast railroad authority, a legislatively created State Agency and Amonos, LLC, a Delaware limited liability company and Sirrah, LLC, a Delaware limited liability company recorded October 16, 2012, as Instrument No. 20120102658, Sonoma County Records.

Dated: May 12, 2016.

Lawrence S. Roberts,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2016–11756 Filed 5–18–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[ONRR–2012–0003 DS63602000 DR2000000.PX8000 167D0102R2]

Notice of Request for Nominees for the U.S. Extractive Industries Transparency Initiative Advisory Committee

AGENCY: Office of Natural Resources Revenue Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior is seeking nominations for individuals to be Committee members or alternates on the U.S. Extractive Industries Transparency Initiative Advisory Committee. We seek nominees who can represent stakeholder constituencies from government, civil society, and industry so that we can fill current vacancies and create a roster of candidates in case future vacancies occur.

DATES: Submit nominations by July 18, 2016.

ADDRESSES: You may submit nominations by any of the following methods.

- Mail or hand-carry nominations to Ms. Rosita Compton Christian; Department of the Interior; 1849 C Street NW., MS 4211, Washington, DC 20240.
- Email nominations to *USEITI@ios.doi.gov.*

FOR FURTHER INFORMATION CONTACT: Rosita Compton Christian at (202) 208–0272 or (202) 513–0597; fax (202) 513–0682; email *Rosita.ComptonChristian@onrr.gov* or *useiti@ios.doi.gov;* or via mail at the Department of the Interior; 1849 C Street NW., MS 4211; Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Department of the Interior (Interior) established the Committee on July 26, 2012, in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App.2), and with the concurrence of the General Services Administration. The Committee serves as the U.S. Extractive Industries Transparency Initiative Multi-Stakeholder Group and advises the Secretary of the Interior on design and implementation of the initiative.

The Committee does the following:

- Oversees the U.S. implementation of the Extractive Industries Transparency Initiative (EITI), a global standard for governments to publicly disclose revenues received from oil, gas, and mining assets belonging to the government, with parallel public disclosure by companies of payments to the government (such as royalties, rents, bonuses, taxes, or other payments).
- Develops and recommends to the Secretary a fully-costed work plan, containing measurable targets and a timetable for implementation and incorporating an assessment of capacity constraints; this plan will be developed in consultation with key EITI stakeholders and published upon completion.
- Provides opportunities for collaboration and consultation among stakeholders.
- Advises the Secretary and posts for consideration by other stakeholders proposals for conducting long-term oversight and other activities necessary to achieve and maintain EITI-compliant status.

The Committee consists of representatives from three stakeholder sectors. The sectors are as follows:

- Industry, including non-Federal representatives from the extractive industry, including oil, gas, and mining companies and industry-related trade associations.
- Civil society, including organizations with an interest in extractive industries, transparency, and government oversight; members of the public; and public and/or private investors.
- Government, including Federal, State, local, and Tribal governments and individual Indian mineral owners.

In addition to honoring the EITI principle of self-selection within the stakeholder sector, the following criteria will be considered in making final selections:

- Understanding of and commitment to the EITI process.
- Ability to collaborate and operate in a multi-stakeholder setting.
- Access to and support from a relevant stakeholder constituency.
- Basic understanding of the extractive industry and/or revenue collection; or willingness to be educated on such matters.

Nominations should include a resume providing relevant contact information and an adequate description of the nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the Committee and to permit the Department of the Interior to contact a potential member.

Parties are strongly encouraged to work with and within stakeholder sectors (including industry, civil society, and government sectors, as the EITI process defines) to jointly consider and submit nominations that, overall, reflect the diversity and breadth of their sector. Nominees are strongly encouraged to include supporting letters from constituents, trade associations, alliances, and/or other organizations that indicate the support by a meaningful constituency for the nominee.

Individuals who are Federally registered lobbyists are ineligible to serve on all FACA and non-FACA boards, committees, or councils in an individual capacity. The term "individual capacity" refers to individuals who are appointed to exercise their own individual best judgment on behalf of the government, such as when they are designated Special Government Employees, rather than being appointed to represent a particular interest.

The Committee will meet quarterly or at the request of the Designated Federal Officer. Non-Federal members of the Committee will serve without compensation. However, we may pay the Travel and per diem expenses of Committee members, if appropriate, under the Federal Travel Regulations.

To learn more about USEITI please visit the official Web site at *www.doi.gov/eiti.*

Dated: May 10, 2016.

Paul A. Mussenden,

Deputy Assistant Secretary—Natural Resources Revenue Management.

[FR Doc. 2016–11778 Filed 5–18–16; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–20925; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before April 16, 2016, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by June 3, 2016.

ADDRESSES: Comments may be sent via U.S. Postal Service to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before April 16, 2016. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FLORIDA

St. Johns County

Menendez Encampment Site, 21 Magnolia St., St. Augustine, 16000295.

IOWA

Carroll County

Manning Water Tower, 620 3rd St., Manning, 16000296.

LOUISIANA

Claiborne Parish

Friendship CME Church, 1055 Friendship Rd., Lisbon, 16000297.

Orleans Parish

Governor House Motor Hotel, The, 1630 Canal St., New Orleans, 16000298.
ODECO Building, 1600 Canal St., New Orleans, 16000300.

Plaquemines Parish

Lincoln, George, House, 30763 Parish Hwy. 11, Nairn, 16000301.

Rapides Parish

Chickama, 687 Chickamaw Rd., Lecompte, 16000302.

St. Mary Parish

Patterson Commercial Historic District, 1106, 1110, 1107, 1109 Main St., Patterson, 16000303.

MASSACHUSETTS

Berkshire County

Frelinghuysen Morris House and Studio, 92 Hawthorne St., 159 West St., Stockbridge, 16000304.

MISSOURI

Cole County

Garnett Farm Historic District, 7119 MO 179, Centertown, 16000305.

NEW YORK

Dutchess County

Beckwith, Walter, House, 482 Jameson Hill Rd., Stanford, 16000306.

Orange County

Bodine's Tavern, 2 Bodine Tavern Rd., Montgomery, 16000307.

Suffolk County

Downs House and Farm, 5793 Sound Ave., Riverhead, 16000308.

NORTH CAROLINA

Forsyth County

Hanes Hosiery Mill—Ivy Avenue Plant, 1245 & 1325 Ivy Ave., Winston-Salem, 16000309.

PENNSYLVANIA

Chester County

Carver Court, Foundry St. & Brooks Ln., Cain Township, 16000310.

SOUTH CAROLINA

Sumter County

Poinsett State Park Historic District, (South Carolina State Parks MPS), 6660 Poinsett Park Rd., Wedgefield, 16000311.

WEST VIRGINIA

Fayette County

Soldiers and Sailors Memorial Building, 100 N. Court St., Fayetteville, 16000312.

Hampshire County

Brill Octagon House, The, Capon Springs & McIlwee Rds., Capon Springs, 16000313.
Pin Oak Fountain, WV 29 & Falconwood Rd., Pin Oak, 16000314.

Roane County

Spencer Presbyterian Church, 408 Market St., Spencer, 16000315.

Authority: 60.13 of 36 CFR part 60.

Dated: April 21, 2016.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2016–11780 Filed 5–18–16; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement (BSEE)

[Docket ID BSEE–2016–0005; OMB Control Number 1014–0010; 16XE1700DX EEEE500000 EX1SF0000.DAQ000]

Information Collection Activities: Decommissioning Activities, Proposed Collection; Comment Request

ACTION: 60-Day notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), BSEE is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns a renewal to the paperwork requirements in the regulations under Subpart Q, *Decommissioning Activities.*

DATES: You must submit comments by July 18, 2016.

ADDRESSES: You may submit comments by either of the following methods listed below.

- Electronically go to *http://www.regulations.gov.* In the Search box, enter BSEE–2016–0005 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.

- Email *nicole.mason@bsee.gov*. Mail or hand-carry comments to the Department of the Interior; BSEE; Regulations and Standards Branch; Attention: Nicole Mason; 45600 Woodland Road, Sterling, Virginia 20166. Please reference ICR 1014–0010 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Nicole Mason, Regulations and Standards Branch at (703) 787–1607 to request additional information about this ICR.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 250, subpart Q, *Decommissioning Activities.*

OMB Control Number: 1014–0010.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the leasing provisions of that Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 1332(6) states that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health."

In addition to the general rulemaking authority of the OCSLA at 43 U.S.C. 1334, section 301(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1751(a), grants authority to the Secretary to prescribe such rules and regulations as are reasonably necessary to carry out FOGRMA's provisions. While the majority of FOGRMA is directed to royalty collection and enforcement, some provisions apply to offshore operations. For example, section 108 of FOGRMA, 30 U.S.C. 1718, grants the Secretary broad authority to inspect lease sites for the purpose of determining whether there is compliance with the mineral leasing laws. Section 109(c)(2) and (d)(1), 30 U.S.C. 1719(c)(2) and (d)(1), impose substantial civil penalties for failure to permit lawful inspections and for knowing or willful preparation or submission of false, inaccurate, or misleading reports, records, or other information. Because the Secretary has delegated some of the authority under FOGRMA to BSEE, 30 U.S.C. 1751 is included as additional authority for these requirements.

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and OMB Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Respondents pay cost recovery fees when removing a platform or other facility, or for decommissioning a pipeline lease term or a right-of-way.

This authority and responsibility are among those delegated to BSEE. The regulations at 30 CFR 250, Subpart Q, concern decommissioning of platforms, wells, and pipelines, as well as site clearance and platform removal and are the subject of this collection. This request also covers the related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

Regulations at 30 CFR 250, Subpart Q, implement these statutory requirements. We use the information for the following reasons:

- To determine the necessity for allowing a well to be temporarily abandoned, the lessee/operator must demonstrate that there is a reason for not permanently abandoning the well, and the temporary abandonment will not constitute a significant threat to fishing, navigation, or other uses of the seabed. We use the information and documentation to verify that the lessee is diligently pursuing the final disposition of the well, and the lessee has performed the temporary plugging of the wellbore.
- The information submitted in initial decommissioning plans in the Alaska and Pacific OCS Regions will permit BSEE to become involved on the ground floor planning of platform removals anticipated to occur in these OCS regions.
- Site clearance and platform or pipeline removal information ensures that all objects (wellheads, platforms, etc.) installed on the OCS are properly removed using procedures that will protect marine life and the environment during removal operations, and the site cleared so as not to conflict with or harm other uses of the OCS.
- Decommissioning a pipeline in place is needed to ensure that it will not constitute a hazard to navigation and commercial fishing operations, unduly interfere with other uses of the OCS, or have adverse environmental effects.
- Verify that decommissioning activities comply with approved applications and procedures and are satisfactorily completed.
- The information is used to evaluate and approve the adequacy of the equipment, materials, and/or procedures that the lessee or operator plans to use during well modifications and changes in equipment, etc.
- The information will help BSEE better estimate future decommissioning costs for OCS leases, rights-of-way, and rights of use and easements. BSEE's future decommissioning cost estimates may then be used by BOEM to set necessary financial assurance levels to minimize or eliminate the possibility that the government will incur abandonment liability.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection.* No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion.

Description of Respondents: Potential respondents comprise Federal oil, gas, or sulphur lessees and/or operators and holders of pipeline rights-of-way.

Estimated Reporting and Recordkeeping Hour Burden: The currently approved annual reporting burden for this collection is 29,437 hours and $2,152,644 non-hour costs. In this submission, we are requesting a total of 29,318 burden hours and $2,154,320 non-hour cost burdens. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

BURDEN BREAKDOWN

[L/T = Lease Term, ROW = Right of Way]

Citation 30 CFR 250 Subpart Q	Reporting requirement	Non-hour cost burdens		
		Hour burden	Average number of annual responses	Annual burden hours (rounded)
General				
1704(g); 1706(a), (f); 1707(d), (h) 1709; 1712; 1715; 1716; 1717; 1721(a),(d), (f)–(h); 1722(a), (b), (d); 1723(b); 1743(a);.	These sections contain references to information, approvals, requests, payments, etc., which are submitted with an APM, the burdens for which are covered under its own information collection.	APM burden covered under 1014–0026		
1700 thru 1754	General departure and alternative compliance requests not specifically covered elsewhere in Subpart Q regulations.	4	175 requests	700
1703; 1704	Request approval for decommissioning	Burden included below		0
1704(h), (i)	Submit to BSEE, within 120 days after completion of each decommissioning activity, a summary of expenditures incurred; any additional information that will support and/or verify the summary.	1	820 summaries/additional information.	820
1705	Submit a description of your blowout preventer (BOP) and its components; schematic drawings; independent third party verification and all supporting information (evidence showing appropriate licenses, has expertise/experience necessary to perform required verifications, etc.).	29	250 submittals	7,250
1705(e)(2)	Allow BSEE access to witness testing, inspections, and information verification. Notify District Manager at least 72 hours prior to shearing ram tests.	0.5	10 submittals	5
1707(a)(2)	Request approval from District Manager to test all BOP system components to rated working pressure; annular BOP less than 70 percent rated working pressure.	0.5	10 requests	5
1707(b)(2)	State reason for postponing test in operations logs	0.5	30 responses	15
1707(b)(2)	Request approval from District Manager for alternate test frequencies if condition/BOP warrant.	0.75	10 requests	8
1707(f)	Request alternative method to record test pressures	0.5	20 requests	10
1707(f)	Record test pressures during BOP and coiled tubing on a pressure chart or w/digital recorder; certify charts are correct.	1	250 records/certifications	250
1707(g)	Record or reference in operations log all pertinent information listed in this requirement; make all documents pertaining to BOP tests, actuations and inspections available for BSEE review at facility for duration of well abandonment activity; retain all records for 2 years at a location conveniently available for the District Manager.	1	250 records	250
1708(a), (b)	Document BOP inspection and maintenance procedures used; record results of BOP inspections and maintenance actions; maintain records for 2 years or longer if directed by BSEE; make available to BSEE upon request.	1	75 records	75
1708(a)	Request alternative method to inspect marine risers	0.5	5 requests	3
Subtotal			1,905 responses	9,391
Permanently Plugging Wells				
1711	Required data if permanently plugging a well	Requirement not considered Information Collection under 5 CFR 1320.3(h)(9)		0
1713	Notify BSEE 48 hours before beginning operations to permanently plug a well.	0.5	700 notices	350
Subtotal			700 responses	350

BURDEN BREAKDOWN—Continued

[L/T = Lease Term, ROW = Right of Way]

Citation 30 CFR 250 Subpart Q	Reporting requirement	Non-hour cost burdens		
		Hour burden	Average number of annual responses	Annual burden hours (rounded)
	Temporary Abandoned Wells			
1721(e); 1722(e), (h)(1); 1741(c).	Identify and report subsea wellheads, casing stubs, or other obstructions; mark wells protected by a dome; mark location to be cleared as navigation hazard.	U.S. Coast Guard requirements		0
1722(c), (g)(2)	Notify BSEE within 5 days if trawl does not pass over protective device or causes damages to it; or if inspection reveals casing stub or mud line suspension is no longer protected.	1	10 notices	10
1722(f), (g)(3)	Submit annual report on plans for re-entry to complete or permanently abandon the well and inspection report.	2.5	95 reports	238
1722(h)	Request waiver of trawling test	1.5	5 requests	8
Subtotal			110 responses	256
	Removing Platforms and Other Facilities			
1726; 1704(a)	Submit initial decommissioning application in the Pacific and Alaska OCS Regions.	20	2 applications	40
1725; 1727; 1728; 1730; 1704(b).	Submit final application and appropriate data to remove platform or other subsea facility structures (including alternate depth departure) or approval to maintain, to conduct other operations, or to convert to artificial reef.	28	327 applications	9,156
		$4,684 fee × 327 = $1,531,668		
1725(e)	Notify BSEE 48 hours before beginning removal of platform and other facilities.	0.5	277 notices	139
1729; 1704(c)	Submit post platform or other facility removal report; supporting documentation; signed statements, etc.	9.5	277 reports	2,632
1731(c)	Request deferral of facility removal subject to RUE issued under 30 CFR 556.	1.75	50 request	88
Subtotal			933 responses	12,055
		$1,531,668 Non-Hour Cost Burdens		
	Site Clearance for Wells, Platforms, and Other Facilities			
1740; 1741(g)	Request approval to use alternative methods of well site, platform, or other facility clearance; contact pipeline owner/operator before trawling to determine its condition.	12.75	75 requests/contact	956
1743(b); 1704(f)	Verify permanently plugged well, platform, or other facility removal site cleared of obstructions; supporting documentation; and submit certification letter.	5	299 verifications	1,495
Subtotal			374 responses	2,451
	Pipeline Decommissioning			
1750; 1751; 1752; 1754; 1704(d).	Submit application to decommission pipeline in place or remove pipeline (L/T or ROW).	10	226 applications	2,260
		$1,142 L/T decommission fee × 226 = $258,092		
		10	168	1,680
		$2,170 ROW decommissioning fees × 168 = $364,560		
1753; 1704(e)	Submit post pipeline decommissioning report	2.5	350 reports	875
Subtotal			744 responses	4,815

BURDEN BREAKDOWN—Continued

[L/T = Lease Term, ROW = Right of Way]

Citation 30 CFR 250 Subpart Q	Reporting requirement	Non-hour cost burdens		
		Hour burden	Average number of annual responses	Annual burden hours (rounded)
Total Burden	....	$622,652 non-hour cost burdens		
			4,766 Responses	29,318
			$2,154,320 Non-Hour Cost Burdens	

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified three non-hour paperwork cost burdens for this collection. Respondents pay cost recovery fees when removing a platform or other facility under § 250.1727 for $4,684, or for decommissioning a pipeline under § 250.1751(a)—L/T for $1,142 or a ROW for $2,170. The fees are required to recover the Federal Government's processing costs, and we have not identified any others. We estimate a total reporting non-hour cost burden of $2,154,320 for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ". . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .". Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have other than hour burden costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. For further information on this burden, refer to 5 CFR 1320.3(b)(1) and (2), or contact the Bureau representative listed previously in this notice.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

BSEE Information Collection Clearance Officer: Nicole Mason, (703) 787–1607.

Dated: May 13, 2016.

Robert W. Middleton,

Deputy Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2016–11829 Filed 5–18–16; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; National Evaluation of the Performance Partnership Pilots for Disconnected Youth (P3) Program

AGENCY: Office of the Assistant Secretary for Policy, Chief Evaluation Office, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents is properly assessed.

Currently, the Department of Labor is soliciting comments concerning the collection of data about the National Evaluation of the Performance Partnership Pilots for Disconnected Youth (P3) [ED–GRANTS–112414–001]. A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before July 18, 2016.

ADDRESSES: You may submit comments by either one of the following methods: *Email: ChiefEvaluationOffice@dol.gov; Mail or Courier:* Christina Yancey, Chief Evaluation Office, OASP, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW., Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Contact Christina Yancey by email at *ChiefEvaluationOffice@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The information collection activities described in this notice will provide data for a systems analysis, as well as implementation and outcome evaluation of the Performance Partnership Pilots for Disconnected Youth (P3) Program. Through the first cohort of P3 grantees, five partnering Federal agencies—the Departments of Education (DOE), Labor (DOL), and Health and Human Services (HHS), along with the Corporation for National and Community Service (CNS) and the Institute of Museum and Library Services (IMLS)—are testing innovative, cost-effective, and outcome-focused strategies for improving results for disconnected youth. Disconnected youth are defined as low-income youth between the ages of 14 and 24 and are either homeless, in foster care, involved in the juvenile justice system, unemployed, or not enrolled in or at risk of dropping out of school. The Federal partners hope to learn more about whether allowing states, localities, and Indian tribes greater flexibility to pool funds and waive programmatic requirements will help them overcome significant hurdles they face in providing effective services to and improving outcomes for disconnected youth. In October 2015, nine competitively-awarded grantees were announced as the first cohort of P3. They received up to $700,000 in start-up funds and the flexibility to blend or braid existing discretionary funds from across programs to improve the outcomes of disconnected youth.

This information collection covers the systems analysis, as well as implementation and outcomes study which will address four main research questions: (1) How do the pilots use the flexibility offered by P3 to implement P3 models and interventions to improve the outcomes of disconnected youth? (2) How has each pilot structured its P3 system and work across partners to provide effective services to disconnected youth? (3) What system change resulted from P3? and (4) Who are the youth who participate in P3, what services do they receive, and what are their outcomes? This **Federal Register** Notice provides the opportunity to comment on three proposed data collection instruments that will be used in the P3 implementation evaluation:

- *Site visit protocols.* The two site visits, anticipated to occur in 2017 and 2018, will include semi-structured interviews with grantee and partners administrators and staff and observations of program activities. Field researchers will use a modular interview guide, organized by major topics that can be adapted based on the respondent's knowledge base, to prompt discussions on topics of interest to the study.
- *Focus group protocols.* During each implementation study visit, the evaluation team will conduct three focus groups per site. Each round of site visits will also include focus groups with youth participants. The protocol will be used to learn about P3 participants, including their initial interest and enrollment in P3, their experiences in the program, and their expectations for the future.
- *Partner Survey.* The survey will be administered during the two site visits to those partners working with the grantees. To better understand relationships of the partner entities within the pilot, the survey, a brief targeted tool, will explore the strength of relationships between the key entities (partners) involved in the P3 pilot. The short survey will systematically collect information on select elements of partner interactions (frequency of communication, level of collaboration, and service referrals).

II. Desired Focus of Comments

Currently, the Department of Labor is soliciting comments concerning the above data collection for the P3 program. DOL is particularly interested in comments that do the following:

- Evaluate whether the proposed collection of information is necessary for the proper performance functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's burden estimate of the proposed information collection, including the validity of the methodology and assumptions;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology—for example, permitting electronic submissions of responses.

III. Current Actions

At this time, the Department of Labor is requesting clearance for the implementation site visit protocols, the focus group protocols, and a survey.

Type of Review: New information collection request.

OMB Control Number: 1205–0NEW.

Affected Public: Staff of state and local government agencies, for-profit institutions, and not-for-profit institutions; and youth participants. Respondent groups identified include (1) administrators and staff of grantees and partners organizations and (2) youth participants.

ESTIMATED TOTAL BURDEN HOURS

Respondents	Estimated total respondents	Number of responses per respondent	Average burden time per response (hours)	Estimated total burden (hours)
Semi-structured Interviews				
Round 1				
P3 Administrators/Staff	135	1	1.25	168.75
Round 2				
P3 Administrators/Staff	135	1	1.25	168.75
Site Visit				
Round 1				
P3 Youth	72	1	1	72
Round 2				

ESTIMATED TOTAL BURDEN HOURS—Continued

Respondents	Estimated total respondents	Number of responses per respondent	Average burden time per response (hours)	Estimated total burden (hours)
P3 Youth	72	1	1	72
Partner Survey				
Round 1				
P3 Administrators/Staff	90	1	.25	22.5
Round 2				
P3 Administrators/Staff	90	1	.25	22.5
Total	594			526.5

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 11, 2016.

Sharon Block,

Principal Deputy Assistant Secretary for Policy, U.S. Department of Labor.

[FR Doc. 2016–11847 Filed 5–18–16; 8:45 am]

BILLING CODE 4510–HX–P

DEPARTMENT OF LABOR

Office of the Secretary

Labor Advisory Committee for Trade Negotiations and Trade Policy

ACTION: Notice of Charter Renewal.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2), the Secretary of Labor and the United States Trade Representative have determined that renewal of the Labor Advisory Committee for Trade Negotiations and Trade Policy is necessary and in the public interest. The Committee will be chartered pursuant to section 135(c)(1) and (2) of the Trade Act of 1974, 19 U.S.C. 2155(c)(1) and (2), as amended and Executive Order 11846 of March 27, 1975, 3 CFR, 1971–1975 Comp., p. 971 (which delegates certain Presidential responsibilities conferred in section 135 of the Trade Act of 1974 to the United States Trade Representative).

SUPPLEMENTARY INFORMATION: The Labor Advisory Committee for Trade Negotiations and Trade Policy consults with and makes recommendations to the Secretary of Labor and the United States Trade Representative on general policy matters concerning labor and trade negotiations, operations of any trade agreement once entered into, and other matters arising in connection with the administration of the trade policy of the United States.

The current Charter expires on May 25, 2016. The renewal of the charter of the Labor Advisory Committee for Trade Negotiations and Trade Policy is necessary and in the public interest, as the Committee will provide information that cannot be obtained from other sources. The Committee shall provide its views to the Secretary of Labor and the Unites States Trade Representative through the Bureau of International Labor Affairs of the U.S. Department of Labor. The Committee is to be comprised of no more than 30 members representing the labor community. The Committee will meet at irregular intervals at the call of the Secretary of Labor and the United States Trade Representative.

FOR FURTHER INFORMATION CONTACT: Anne M. Zollner, Designated Federal Official and Division Chief, Trade Policy and Negotiations, Office of Trade and Labor Affairs, Bureau of International Labor Affairs, Department of Labor, Frances Perkins Building, Room S–5317, 200 Constitution Ave. NW., Washington, DC 20210, telephone (202) 693–4890.

Signed at Washington, DC, this day 13 of May 2016.

Carol Pier,

Deputy Undersecretary of the International Labor Affairs Bureau.

[FR Doc. 2016–11842 Filed 5–18–16; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "Survey of Occupational Injuries and Illnesses." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before July 18, 2016.

ADDRESSES: Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Nora Kincaid, BLS Clearance Officer, 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 24(a) of the Occupational Safety and Health Act of 1970 requires the Secretary of Labor to develop and maintain an effective program of collection, compilation, and analysis of statistics on occupational injuries and illnesses. The Commissioner of Labor Statistics has been delegated the responsibility for "Furthering the purpose of the Occupational Safety and Health Act by developing and maintaining an effective program of collection, compilation, analysis and publication of occupational safety and health statistics." The BLS fulfills this responsibility, in part, by conducting the Survey of Occupational Injuries and Illnesses in conjunction with participating State statistical agencies. The BLS Survey of Occupational Injuries and Illnesses provides the Nation's primary indicator of the progress towards achieving the goal of safer and healthier workplaces. The survey produces the overall rate of occurrence of work injuries and illnesses by industry which can be compared to prior years to produce measures of the rate of change. These data are used to assess the Nation's progress in improving the safety and health of America's work places; to prioritize scarce Federal and State resources; to guide the development of injury and illness prevention strategies; and to support Occupational Safety and Health Administration (OSHA) and State safety and health standards and research. Data are essential for evaluating the effectiveness of Federal and State programs for improving work place safety and health. For these reasons, it is necessary to provide estimates separately for participating States.

II. Current Action

Office of Management and Budget clearance is being sought for the Survey of Occupational Injuries and Illnesses. The survey measures the overall rate of occurrence of work injuries and illnesses by industry for private industry, State governments, and local governments. For the more serious injuries and illnesses, those with days away from work, the survey provides detailed information on the injured/ill worker (age, sex, race, industry, occupation, and length of service), the time in shift, and the circumstances of the injuries and illnesses classified by standardized codes (nature of the injury/illness, part of body affected, primary and secondary sources of the injury/illness, and the event or exposure which produced the injury/illness).

Beginning with the 2011 survey year, BLS began testing the collection of case and demographic data for injury and illness cases that require only days of job transfer or restriction. The purpose of this on-going pilot study is to evaluate collection of these cases and to learn more about occupational injuries and illnesses that resulted in days of job transfer or work restriction.

For survey year 2016, case circumstance and worker characteristic data for days of job transfer or work restriction cases will be collected for the following six NAICS* industry subsectors in private industry:

Beverage and tobacco product manufacturing (NAICS 312)
General merchandise stores (NAICS 452)
Couriers and messengers (NAICS 492)
Waste management and remediation services (NAICS 562)
Hospitals (NAICS 622)
Accommodation (NAICS 721)

BLS is analyzing the results of this test to determine the value of the resulting information and is looking at how best to implement the collection of these data as well as days away from work cases in future survey years. The BLS regards the collection of these cases with only job transfer or restriction as significant in its coverage of the American workforce.

Starting in 2017, BLS is planning to conduct tests to determine the feasibility of collecting injury and illness data directly from workers in a household survey. The first test will be a large-scale, nationally representative household pilot survey that will allow BLS to test the collection of information over one calendar year and also to produce broad industry and occupation estimates comparable to the SOII. These tests will continue BLS research into ways to improve completeness of injury and illness measures.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Survey of Occupational Injuries and Illnesses.

OMB Number: 1220–0045.

Affected Public: Businesses or other for-profits; Not-for-profit institutions; Farms; State, Local or Tribal Governments.

RESPONDENT BURDEN ESTIMATES

Form	Total respondents	Frequency	Total responses	Average time per response	Estimated total burden
BLS 9300	240,000	Annually	240,000	.375 hour	90,000 hours.
Pre-notification Package	162,000 out of 240,000	Annually	162,000 out of 240,000	1.36111 hours	220,500 hours.
TOTALS	240,000	Annually	240,000		310,500.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 13th day of May 2016.

Kimberly Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2016–11777 Filed 5–18–16; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Establish an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than three years.

DATES: Written comments on this notice must be received by July 18, 2016 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

For Additional Information or Comments: Ms. Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1 (800) 877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: Grantee Reporting Requirements for Materials Research Science and Engineering Centers (MRSECs).

OMB Number: 3145–0230.

Expiration Date of Approval: December 31, 2016.

Type of Request: Intent to seek approval to renew an information collection.

Overview of This Information Collection

The Materials Research Science and Engineering Centers (MRSECs) Program supports innovation in interdisciplinary research, education, and knowledge transfer. MRSECs build intellectual and physical infrastructure within and between disciplines, weaving together knowledge creation, knowledge integration, and knowledge transfer. MRSECs conduct world-class research through partnerships of academic institutions, national laboratories, industrial organizations, and/or other public/private entities. New knowledge thus created is meaningfully linked to society.

MRSECs enable and foster excellent education, integrate research and education, and create bonds between learning and inquiry so that discovery and creativity more fully support the learning process. MRSECs capitalize on diversity through participation in center activities and demonstrate leadership in the involvement of groups underrepresented in science and engineering.

MRSECs are required to submit annual reports on progress and plans, which are used as a basis for performance review and determining the level of continued funding. To support this review and the management of a Center, MRSECs will be required to develop a set of management and performance indicators for submission annually to NSF via the Research Performance Project Reporting module in Research.gov and an external technical assistance contractor that collects programmatic data electronically. These indicators are both quantitative and descriptive and may include, for example, the characteristics of center personnel and students; sources of financial support and in-kind support; expenditures by operational component; characteristics of industrial and/or other sector participation; research activities; education activities; knowledge transfer activities; patents, licenses; publications; degrees granted to students involved in Center activities; descriptions of significant advances and other outcomes of the MRSEC effort. Such reporting requirements are included in the cooperative agreement that is binding between the academic institution and NSF.

Each Center's annual report will address the following categories of activities: (1) Research, (2) education, (3) knowledge transfer, (4) partnerships, (5) shared experimental facilities, (6) diversity, (7) management, and (8) budget issues.

For each of the categories the report will describe overall objectives for the year, problems the Center has encountered in making progress towards goals, anticipated problems in the following year, and specific outputs and outcomes.

MRSECs are required to file a final report through the RPPR and external technical assistance contractor. Final reports contain similar information and metrics as annual reports, effectively they constitute the last annual report; the Program Officer maintains a cumulative database with all relevant achievements and metrics.

Use of the Information: NSF will use the information to continue funding of the Centers, and to evaluate the progress of the program.

Estimate of Burden: 80 hours per center for 21 centers for a total of 1,680 hours.

Respondents: Non-profit institutions.

Estimated Number of Responses per Report: One from each of the 21 MRSECs.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: May 16, 2016.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2016–11787 Filed 5–18–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Computing and Communication Foundations; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Proposal Panel Review for Computing and Communication Foundations—Science and Technology Centers—Integrative Partnerships (#1192) Site Visit.

Date/Time:

June 7, 2016; 6:30 p.m.–8:30 p.m.
June 8, 2016; 8:00 a.m.–8:00 p.m.
June 9, 2016; 8:30 a.m.–3:00 p.m.

Place: Massachusetts Institute of Technology (MIT), Cambridge, MA 02139.

Type of Meeting: Part Open.

Contact Person: John Cozzens, National Science Foundation, 4201 Wilson Boulevard, Room 1115, Arlington, VA 22230; Telephone: (703) 292–8910.

Purpose of Meeting: Site visit to assess the progress of the STC Award: 1231216 "A Center for Brains, Minds and Machines: the Science and the Technology of Intelligence", and to provide advise and recommendations concerning further NSF support for the Center.

Agenda: MIT Site Visit.

Tuesday, June 7, 2016

6:30 p.m. to 8:30 p.m.: Closed

Site Team and NSF Staff meets to discuss Site Visit materials, review process and charge

Wednesday, June 8, 2016

8:00 a.m. to 1:00 p.m.: Open

Presentations by Awardee Institution, faculty staff and students, to Site Team and NSF Staff; Discussions, question and answer sessions

1:00 p.m.–8:00 p.m.: Closed

Draft report on education and research activities

Thursday, June 9, 2016

8:30 a.m.–noon: Open

Response presentations by Site Team and NSF Staff Awardee Institution faculty staff; Discussions, question and answer sessions

Noon to 3:00 p.m.: Closed

Complete written site visit report with preliminary recommendations.

Reason for Closing: The program review include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the award. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 16, 2016.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2016–11816 Filed 5–18–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[RIS–2016–06; NRC–2011–0146]

NRC Regulation of Radium-226 Under Military Control and for Coordination on Comprehensive Environmental Response, Compensation and Liability Act Response Actions at the U.S. Department of Defense Sites With Radioactive Materials

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory issue summary; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued a regulatory issues summary (RIS) NRC–2016–06, "NRC Regulation of Radium-226 Under Military Control and for Coordination on Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Response Actions at the U.S. Department of Defense (DoD) Sites with Radioactive Materials," and a Memorandum of Understanding (MOU) between the NRC and the DoD for coordination on CERCLA response actions at DoD sites with unlicensed radioactive materials.

DATES: This RIS was issued on May 9, 2016.

ADDRESSES: Please refer to Docket ID NRC–2011–0146 when contacting the NRC about the availability of information regarding these documents. You may obtain publicly-available information related to these documents using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0146. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- The RIS is also available on the NRC's public Web site at *http://www.nrc.gov/reading-rm/doc-collections/gen-comm/reg-issues/* (select 2016 and then select "RIS–2016–06").
- The MOU is also available on the NRC's public Web site at *http://www.nrc.gov/docs/ML1609/ML16092A294.pdf.*

FOR FURTHER INFORMATION CONTACT: Richard Chang, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5563; email: *Richard.Chang@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

The RIS summarizes the NRC's regulatory oversight of radium-226 under military control, and explains that the NRC and the DoD will coordinate on CERCLA response actions at the DoD sites with radioactive material, including radium, that is not licensed under the Atomic Energy Act of 1954, as amended (AEA) through an MOU. On April 28, 2016, the NRC and the DoD entered into an MOU that governs both agencies' roles and responsibilities with respect to the DoD's CERCLA response actions for radium contamination and other unlicensed material contamination.

The final RIS and an enclosure containing a summary of public comments on the draft RIS and NRC's responses are available in ADAMS under Accession No. ML15167A324. The MOU is available in ADAMS under Accession No. ML16092A294.

II. Congressional Review Act

This RIS is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated at Rockville, Maryland, this 13th day of May 2016.

For the Nuclear Regulatory Commission.

Christepher McKenney,

Acting Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2016–11825 Filed 5–18–16; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2016–166; Order No. 3292]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning notice to enter into an additional Global Reseller Expedited Package Services 2 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 20, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

On May 12, 2016, the Postal Service filed notice that it has entered into an additional Global Reseller Expedited Package Services 2 (GREPS 2) negotiated service agreement (Agreement).[1]

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket No. CP2016–166 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than May 20, 2016. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Cassie D'Souza to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2016–166 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Cassie D'Souza is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than May 20, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2016–11758 Filed 5–18–16; 8:45 am]

BILLING CODE 7710–FW–P

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[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Reseller Expedited Package 2 Negotiated Service Agreement, May 12, 2016 (Notice).

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* May 19, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 13, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 214 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–131, CP2016–167.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–11779 Filed 5–18–16; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77829; File No. SR–NYSE–2016–24]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment No. 2, Relating to Pre-Opening Indications and Opening Procedures

May 13, 2016.

On March 17, 2016, New York Stock Exchange LLC ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules relating to pre-opening indications and opening procedures. On March 30, 2016, the Exchange filed Amendment No. 1 to the proposed rule change. On March 31, 2016, the Exchange filed Amendment No. 2 to the proposed rule change. The proposed rule change, as modified by Amendment No. 2, was published for comment in the **Federal Register** on April 6, 2016.[3] The Commission received no comments on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is May 21, 2016. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to section 19(b)(2) of the Act,[5] designates July 5,

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77491 (Mar. 31, 2016), 81 FR 20030.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

2016, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–NYSE–2016–24).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Brent J. Fields,

Secretary.

[FR Doc. 2016–11759 Filed 5–18–16; 8:45 am]

BILLING CODE 8011–01–P

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[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77831; File No. SR–NASDAQ–2016–023]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Withdrawal of Proposed Rule Change To Amend Rules 4702 and 4703

May 13, 2016.

On February 10, 2016, The NASDAQ Stock Market LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the processing of certain orders that are eligible to participate in the Opening Cross and have a Pegging Attribute or are designated for routing, and to make technical corrections to certain rules. The proposed rule change was published for comment in the **Federal Register** on March 1, 2016.[3] The Commission received no comment letters on the proposal. On April 12, 2016, pursuant to section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On May 11, 2016, the Exchange withdrew the proposed rule change (File No. SR–NASDAQ–2016–023).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Brent J. Fields,

Secretary.

[FR Doc. 2016–11761 Filed 5–18–16; 8:45 am]

BILLING CODE 8011–01–P

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77226 (February 24, 2016), 81 FR 10687.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 77592, 81 FR 22674 (April 18, 2016). The Commission designated May 30, 2016, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77830; File No. SR–NYSEArca–2016–72]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Changes to Procedures Regarding Establishing the LBMA Silver Price

May 13, 2016.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 12, 2016, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to changes to the methodology utilized by CME Group, Inc. ("CME Group") and Thomson Reuters to establish the London Bullion Market Association ("LBMA") Silver Price (formerly the London Silver Price). The LBMA Silver Price is the price used with respect to calculation of the net asset value for the iShares Silver Trust, ETFS Silver Trust, and ETFS Precious Metals Basket Trust, each of which is currently listed on the Exchange under NYSE Arca Equities Rule 8.201, and is the underlying benchmark for ProShares Ultra Silver and ProShares UltraShort Silver, each of which is currently listed on the Exchange under NYSE Arca Equities Rule 8.200. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is submitting this proposed rule change in connection with changes to the methodology, as described below, used by CME Group and Thomson Reuters to establish the LBMA Silver Price (formerly the London Silver Price), to be implemented on May 16, 2016. The LBMA Silver Price is the price used with respect to calculation of the net asset value for the iShares Silver Trust, ETFS Silver Trust, and ETFS Precious Metals Basket Trust (together, the "Silver Trusts"), each of which is currently listed on the Exchange under NYSE Arca Equities Rule 8.201 (Commodity-Based Trust Shares), and is the underlying benchmark for ProShares Ultra Silver and ProShares UltraShort Silver (together, the "Silver Funds"), each of which is currently listed on the Exchange under NYSE Arca Equities Rule 8.200 (Trust Issued Receipts).[4]

As of August 14, 2014, the London Silver Price (now known as the "LBMA Silver Price") replaced the "London Silver Fix" as the mechanism for pricing silver. As of such date, CME Group has provided the price platform and methodology for the LBMA Silver Price and Thomson Reuters has been responsible for governance and oversight of the LBMA Silver Price. Currently, six price participants have been accredited to contribute to the LBMA Silver Price as follows: China Construction Bank, HSBC Bank USA NA, JPMorgan Chase Bank, The Bank of Nova Scotia—ScotiaMocatta, The Toronto Dominion Bank and UBS AG.

In connection with implementation of the LBMA Silver Price as a replacement for the London Silver Fix, the Exchange filed a proposed rule change regarding the change to the benchmark price for the Silver Trusts and the change to the "Underlying Benchmark" for the Silver Funds from the London Silver Fix to the London Silver Price.[5] Specifically, with respect to the Silver Trusts, the Exchange proposed to change the benchmark price used by the Silver Trusts for calculation of the net asset value of shares of each of such trust. In addition, the Exchange proposed to reflect a change in the Underlying Benchmark applicable to the Silver Funds. In this filing, the Exchange describes new measures to be implemented by CME Group and Thomson Reuters on May 16, 2016 relating to the LBMA Silver Price.

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] ETFS White Metals Basket Trust, shares of which were previously listed and traded on the Exchange under NYSE Arca Equities Rule 8.201, was delisted from the Exchange on March 3, 2016.

The LBMA Silver Price Mechanism[6]

As described in the Prior Notice, according to the ETFS Silver Registration Statement, as of August 15, 2014, CME Group has conducted an "equilibrium auction" once daily during London trading hours among LBMA-authorized participating bullion banks and market makers ("silver participants") that establishes a price—the LBMA Silver Price—which provides reference silver prices for that day's trading.[7]

CME Group has established an electronic, over-the-counter, auction market for silver participants that discovers the LBMA Silver Price over multiple auction rounds that begin at 12:00 noon London time each business day. The LBMA Silver Price is the result of an "equilibrium auction" because it establishes a price for a troy ounce of silver London Good Delivery Bars[8] that will clear the maximum amount of bids and offers for silver entered by order-submitting silver participants each day. Once the LBMA Silver Price, which is calculated in US dollars, is established, Thomson Reuters disseminates that day's LBMA Silver Price to the markets and other market data providers such as Bloomberg via the Thomson Reuters Eikon and Elektron systems.

CME Group Auction Process

As described in the Prior Notice, the CME Group auction process begins with a notice of an auction round issued to silver participants before the commencement of the auction round stating a silver price in US dollars at which the auction round will be conducted. An auction round lasts 30 seconds. Silver participants electronically place bid and offer orders at the round's stated price and indicate whether the orders are for their own account or for the account of clients. The Prior Notice stated that all auction round order information other than the identity of those placing orders are displayed electronically in real time for all silver participants. The CME Group system administrator observes all auction round bid and offer order information, including the identity of those submitting orders. As long as the auction is open, silver participants may alter, change or withdraw their orders.

At the end of the auction round, the CME Group system evaluates the equilibrium of the bid and offer orders submitted. If bid and offer orders indicate an imbalance outside of acceptable tolerances established for the CME Group system (*e.g.*, too many purchase orders submitted compared to sell orders or vice versa), a CME Group system algorithm calculates a new auction round price principally based on the volume weighting of bid and offer orders submitted in the immediately completed auction round. To clear the imbalance, the CME Group system then issues another notice of auction round to silver participants at the newly calculated price. During this next 30 second auction round, silver participants again submit orders, and after it ends, the CME Group system evaluates for order imbalances. If order imbalances persist, a new auction price will be calculated and a further auction round will occur. This auction round process continues until an equilibrium within specified tolerances is determined to exist. Once the CME Group system determines that orders are in equilibrium within system tolerances, the auction process ends and the equilibrium auction round price becomes the LBMA Silver Price.

Currently, the LBMA Silver Price and all bid and offer order information for all auction rounds become publicly available electronically via Thomson Reuters instantly after the conclusion of the equilibrium auction. The CME Group system also simultaneously matches bid and offer orders from the equilibrium auction for bilateral settlement among the silver participants. Orders reflecting any imbalance between bids and offers that are within the CME Group system tolerances are then allocated to the first tier participants for settlement.

On March 22, 2016, CME Group and Thomson Reuters issued a press release[9] announcing implementation of new measures relating to the LBMA Silver Price Benchmark, effective May 16, 2016.[10] The following are the principal new measures to be implemented. First, a "blind auction" will be introduced. Only prices will be visible during each round. Once an auction round has ended, aggregate buy and sell volumes will be publicly available. Second, with respect to sharing the imbalance in the auction, the imbalance (where applicable) will be shared equally among all registered participants of the auction, even if a participant has not placed an order in the auction for that day. Currently, the imbalance is shared only among participants that have placed an order in the auction for that day.[11] Third, in exceptional circumstances, the calculation agent (CME Group) can increase the imbalance threshold during an auction, within an approved range, to establish the LBMA Silver Price and settle the auction.

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[5] *See* Securities Exchange Act Release No. 72847 (August 14, 2014), 79 FR 49350 (August 20, 2014) (SR–NYSEArca–2014–88) (notice of filing and immediate effectiveness of proposed rule change (1) to reflect a change to the value used by the iShares Silver Trust, ETFS Silver Trust, ETFS White Metals Basket Trust and ETFS Precious Metals Basket Trust with respect to calculation of the net asset value of shares of each trust; and (2) to reflect a change to the underlying benchmark for ProShares Ultra Silver and ProShares UltraShort Silver) (the "Prior Notice").

[6] The description in the Prior Notice of the London Silver Price mechanism was based, in part, on the "ETFS Silver Registration Statement", defined in the Prior Notice as follows: Post-Effective Amendment No. 1 on Form S–1 under the 1933 Act for the ETFS White Metals Basket Trust, filed with the Commission on August 13, 2014 (No. 333–195441); Post-Effective Amendment No. 1 on Form S–3 under the 1933 Act for the ETFS Precious Metals Basket Trust, filed with the Commission on August 13, 2014 (No. 333–195675); Post-Effective Amendment No. 1 on Form S–3 under the 1933 Act for the ETFS Silver Trust, filed with the Commission on August 8, 2014 (No. 333–195514).

[7] The term "LBMA Silver Price" means the price for an ounce of silver set by LBMA-authorized participating bullion banks and market makers in the electronic, over-the-counter auction operated by CME Group at approximately 12:00 noon London time, on each working day and disseminated by Thomson Reuters. CME Group provides the electronic auction platform on which the price is calculated, while the LBMA accredits market participants. Thomson Reuters is responsible for governance and oversight of the LBMA Silver Price, and is regulated by the Financial Conduct Authority ("FCA") for its role as the benchmark administrator. The LBMA Silver Price is regulated under the FCA's Market Conduct (MAR) Sourcebook (MAR 8.3). As the LBMA Silver Price Administrator, Thomson Reuters has adopted and issued the LBMA Silver Price Administrator Code of Conduct and has undertaken to perform the LBMA Silver Price Administrator responsibilities in accordance with MAR 8.3. Among the LBMA Silver Price Administrator's responsibilities are that it: (1) Have in place effective arrangements and procedures that allow the regular monitoring and surveillance of the auction process; (2) monitor the benchmark submissions in order to identify breaches of its practice standards and conduct that may involve manipulation, or attempted manipulation, of the specified benchmark it administers and provide to the oversight committee of the specified benchmark timely updates of suspected breaches of practice standards and attempted manipulation; (3) notify the FCA and provide all relevant information where it suspects that, in relation to the specified benchmark it administers, there has been (i) a material breach of the benchmark administrator's practice standards; (ii) conduct that may involve manipulation or attempted manipulation of the specified benchmark it administers; or (iii) collusion to manipulate or to attempt to manipulate the specified benchmark it administers; (4) ensure that the specified benchmark it administers is determined using adequate benchmark submissions; and (5) establish an oversight committee. The LBMA Silver Price Oversight Committee reviews and maintains the definition, setting, scope and methodology of the benchmark. *See* Thomson Reuters Benchmark Services—LBMA Silver Price Administrator Code of Conduct, available at *http://financial.thomsonreuters.com/content/dam/openweb/documents/pdf/financial/lbma-silver-price-administrator-code-of-conduct-2015.pdf*.

[8] A London Good Delivery Bar is acceptable for delivery in settlement of a transaction on the over-the counter market. A London Good Delivery Bar must contain between 750 ounces and 1,100 ounces of silver with a minimum fineness (or purity) of 999.0 parts per 1,000. A London Good Delivery Bar must also bear the stamp of one of the refiners who are on the LBMA-approved list.

[9] *See* "CME Group and Thomson Reuters to Enhance LBMA Silver Price Benchmark", dated March 22, 2016 ("March 22 Press Release").

The Prior Notice stated that the LBMA Silver Price auction process is fully auditable by third parties since an audit trail exists from the time of each notice of an auction round. The LBMA Silver Price auction process will continue to be fully auditable. Moreover, the LBMA Silver Price's audit trail and active, real time surveillance of the auction process by the CME Group system administrator combined with silver participants' agreement to abide by CME Group silver market rules and the Thomson Reuters code of conduct will deter manipulative and abusive conduct in establishing each day's LBMA Silver Price.[12]

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5)[13] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that, according to the LBMA,[14] the LBMA Silver Price mechanism is electronic, auction-based and auditable. In the Prior Notice, the Exchange represented that it believed that the LBMA Silver Price (formerly, the London Silver Price) mechanism serves as an appropriate replacement to the London Silver Fix for purposes of determining the net asset value of shares of the Silver Trusts or as the Underlying Benchmark applicable to the Silver Funds because of the transparency of the auction process, the participation of an increased number of market participants compared to the London Silver Fix, and the auditability of the silver pricing mechanism. The CME Group system administrator will observe all auction round bid and offer order information, including the identity of those submitting orders. While aggregate bid and offer volumes would no longer be disclosed during the auction round, the London Silver Price and all bid and offer order information for all auction rounds will become publicly available electronically via Thomson Reuters after the conclusion of the equilibrium auction. The LBMA Silver Price is widely disseminated by one or more major market data vendors and/or exchanges.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that the LBMA Silver Price auction process is fully transparent in real time to the general public at the close of each equilibrium auction. The LBMA Silver Price auction process also is fully auditable by third parties since an audit trail exists from the time of each notice of an auction round. Moreover, the LBMA Silver Price's audit trail and active, real time surveillance of the auction process by the CME Group system administrator combined with silver participants' agreement to abide by CME Group silver market rules and the Thomson Reuters code of conduct deters manipulative and abusive conduct in establishing each day's LBMA Silver Price.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[17] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[18] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day delayed operative date is consistent with the protection of investors and the public interest because: (1) CME and Thomson Reuters will implement the changes described above beginning May 16, 2016; (2) waiver of the 30-day delayed operative date would accommodate trading of the

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[10] CME Group, Thomson Reuters and the independent Silver Price Oversight Committee previously announced in a press release a change to the LBMA Silver Price protocol, in place since January 29, 2016, to suspend an auction if CME Group and Thomson Reuters believe the integrity of the auction or participants is threatened. *See* "Developments to LBMA Silver Price Benchmark—Joint Statement by Thomson Reuters, CME Group and the independent Silver Price Oversight Committee", dated February 4, 2016. According to the March 22 Press Release, this change in protocol allows for the auction to be stopped, reset and restarted to address significant price movements during the auction, which are inconsistent with the underlying market.

[11] As an equilibrium auction, settlement occurs when, at the end of a round, the total of buy and sell orders are within a predefined imbalance tolerance.

[12] According to LBMA, the Prudential Regulation Authority (PRA) at the Bank of England now has overall responsibility for the prudential regulation of banks, building societies, credit unions, insurers and major investment firms, many of whom are active in the bullion market. The conduct of financial institutions is overseen by the FCA, which was formed from the former Financial Services Authority and is separate from the Bank of England.

[13] 15 U.S.C. 78f(b)(5).

[14] *See* "LBMA Silver Price Solution: CME Group & Thomson Reuters," dated July 11, 2014, available at: *http://www.lbma.org.uk/_blog/lbma_media_centre/post/silverpricesolution/.*

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

Silver Trusts and Silver Funds as of May 16, 2016; (3) the Silver Trusts and the Silver Funds do not control the date on which changes to the LBMA Silver Price auction procedures are implemented; and (4) the Silver Trusts and Silver Funds collectively represent approximately $6.9 billion in market value, and any trading suspension would cause significant harm to investors. Based on the foregoing, the Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–72 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–72. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–72 and should be submitted on or before June 9, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Brent J. Fields,

Secretary.

[FR Doc. 2016–11760 Filed 5–18–16; 8:45 am]

BILLING CODE 8011–01–P

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[19] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 9569]

Notice of Meeting of Advisory Committee on International Law

A meeting of the Department of State's Advisory Committee on International Law will take place on Tuesday, May 24, from 9:30 a.m. to 5:00 p.m. at the George Washington University Law School, Michael K. Young Faculty Conference Center, 716 20th Street NW., 5th Floor, Washington, DC. Legal Adviser Brian Egan will chair the meeting, which will be open to the public up to the capacity of the conference room. The meeting will include discussions on a variety of international law topics. This notice is being published with less than 15 days' notice as a result of delays in receiving information relevant to the make-up and structure of the newly rechartered Committee. Further, it is important that this meeting take place in advance of certain upcoming diplomatic engagements.

Members of the public who wish to attend or request reasonable accommodation should contact the Office of the Legal Adviser by May 22 at *simcockjc@state.gov* or (202) 776–8477 and provide their name, professional affiliation, address, and phone number. A valid photo ID is required for admission to the meeting. Late requests will be considered but might not be possible to accommodate.

Dated: May 13, 2016.

Julian Simcock,

Attorney-Adviser, Office of the Legal Adviser, Executive Director, Advisory Committee on International Law, United States Department of State.

[FR Doc. 2016–11885 Filed 5–18–16; 8:45 am]

BILLING CODE 4710–08–P

SUSQUEHANNA RIVER BASIN COMMISSION

Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold its regular business meeting on June 16, 2016, in Lancaster, Pennsylvania. Details concerning the matters to be addressed at the business meeting are contained in the Supplementary Information section of this notice.

DATES: The meeting will be held on Thursday, June 16, 2016, at 9 a.m.

ADDRESSES: The meeting will be held at the DoubleTree Resort by Hilton Hotel Lancaster, Terrace Room, 2400 Willow Street Pike, Lancaster, PA 17602.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436.

SUPPLEMENTARY INFORMATION: The business meeting will include actions or presentations on the following items: (1) Informational presentation of interest to the Lower Susquehanna Subbasin area; (2) election of officers for FY2017; (3) the proposed Water Resources Program for fiscal years 2017 and 2018; (4) amendment of the *Comprehensive Plan for the Water Resources of the Susquehanna River Basin;* (5) the proposed FY2017 Regulatory Program Fee Schedule; (6) adoption of a preliminary FY2018 budget; (7) ratification/approval of contracts/grants; (8) consideration to change the name of the Compliance Reserve Fund and amend said policy; (9) a proposed guidance for expiring project approvals; (10) a proposed guidance for terminating review of a project application; (11) regulatory compliance matter for New Enterprise Stone & Lime Co., Inc.; and (12) Regulatory Program projects.

Projects, the fee schedule, the guidance documents for expiring project approvals and terminating review of a project application, and amendments to the Comprehensive Plan listed for Commission action are those that were the subject of a public hearing conducted by the Commission on May 4, 2016, and identified in the notice for such hearing, which was published in 81 FR 20046, April 6, 2016.

The public is invited to attend the Commission's business meeting. Comments on the Regulatory Program projects, the fee schedule, the guidance documents for expiring project approvals and terminating review of a project application, and amendments to the Comprehensive Plan were subject to a deadline of May 16, 2016. Written comments pertaining to other items on the agenda at the business meeting may be mailed to the Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pennsylvania 17110–1788, or submitted electronically through *http://www.srbc.net/pubinfo/publicparticipation.htm.* Such comments are due to the Commission on or before June 10, 2016. Comments will not be accepted at the business meeting noticed herein.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: May 13, 2016.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2016–11751 Filed 5–18–16; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty-Seventh Meeting: RTCA Special Committee 216 (SC–216) Aeronautical Systems Security

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Notice of Twenty-Seventh RTCA Special Committee 216 Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of the Twenty-Seventh RTCA Special Committee 216 meeting.

DATES: The meeting will be held June 15–17, 2016 from 9:00 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org* or Karan Hofmann, Program Director, RTCA, Inc., *khofmann@rtca.org,* (202) 330–0680.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of RTCA Special Committee 216. The agenda will include the following:

Wednesday, June 15, 2016 (1:00 p.m.–5:00 p.m.)

1. Welcome and Administrative Remarks
2. Introductions
3. Agenda Review
4. Meeting—Minutes Review
5. ARAC ASISP Update
6. WG–72 Update
7. Working Paper Review
8. Schedule Update
9. Date, Place and Time of Next Meeting
10. New Business
11. Adjourn Plenary

Thursday, June 16, 2016 (9:00 a.m.–5:00 p.m.)

1. Continuation of Plenary or Working Group Sessions

Friday, June 17, 2016 (9:00 a.m.–3:00 p.m.)

1. Continuation of Plenary or Working Group Sessions

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Plenary information will be provided upon request. Persons who wish to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 16, 2016.

Latasha Robinson,

Management & Program Analyst, NextGen, Enterprise Support Services Division, Federal Aviation Administration.

[FR Doc. 2016–11910 Filed 5–18–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review for Bob Hope Airport, Burbank, California

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Bob Hope Airport under the provisions of 49 U.S.C. 47501 *et seq.* (the Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act") and 14 Code of Federal Regulations (CFR) Part 150 by the Burbank-Glendale-Pasadena Airport Authority, Burbank, California. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Bob Hope Airport were in compliance with applicable requirements, effective October 10, 2013, 78 FR 64048–64049. The proposed noise compatibility program will be approved or disapproved on or before November 7, 2016.

DATES: *Effective Date:* The effective date of the start of FAA's review of the noise compatibility program is May 11, 2016. The public comment period ends July 11, 2016.

FOR FURTHER INFORMATION CONTACT: Victor Globa, Federal Aviation Administration, Los Angeles Airports District Office, P.O. Box 92007, Los Angeles, California 90009–2007, Telephone: 310/725–3637. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Bob Hope Airport which will be approved or disapproved on or before November 7, 2016. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of 14 CFR part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has formally received the noise compatibility program for Bob Hope Airport, effective on April 6, 2016. The airport operator has requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act. Preliminary review of the submitted material indicates that it conforms to 14 CFR part 150 requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before November 7, 2016.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety or create an undue burden on interstate or foreign commerce, and whether they are reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments relating to these factors, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Western-Pacific Region Office, Airports Division, Room 3012, 15000 Aviation Boulevard, Hawthorne, California 90261.

Federal Aviation Administration, Los Angeles Airports District Office, 15000 Aviation Boulevard, Room 3000, Hawthorne, California 90261.

Bob Hope Airport, Attention: Mr. Mark Hardyment, 2627 Hollywood Way, Burbank, California 91505.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California, on May 11, 2016.

Mark A. McClardy,

Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 2016–11814 Filed 5–18–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0056]

Decision That Certain Nonconforming Motor Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration

ACTION: Grant of petitions.

SUMMARY: This document announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS) are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards or because they have safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS.

DATES: These decisions became effective on the dates specified in Annex A.

ADDRESSES: For further information contact Mr. George Stevens, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and/or sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions.

Comments: No substantive comments were received in response to the petitions identified in Appendix A.

NHTSA Decision: Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable FMVSS, is either substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable FMVSS or has safety features that comply with, or are capable of being altered to comply with, all applicable Federal Motor Vehicle Safety Standards.

Vehicle Eligibility Number for Subject Vehicles: The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B) and (b)(1); 49 CFR 593.7; delegations of authority at 49 CFR 1.95 and 501.8.

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

Annex A

Nonconforming Motor Vehicles Decided To Be Eligible for Importation

1. Docket No. NHTSA–2015–0022

Nonconforming Vehicles: 2006 Ferrari 612 Scagletti passenger cars manufactured before September 1, 2006.

Substantially Similar U.S. Certified Vehicles: 2006 Ferrari 612 Scagletti passenger cars manufactured before September 1, 2006.

Notice of Petition Published at: 80 FR 47555 (August 7, 2015).

Vehicle Eligibility Number: VSP–573 (effective date October 6, 2015).

2. Docket No. NHTSA–2015–0079

Nonconforming Vehicles: 2010 Harley-Davidson FX, XL, and VR motorcycles.

Substantially Similar U.S. Certified Vehicles: 2010 Harley-Davidson FX, XL, and VR motorcycles.

Notice of Petition Published at: 81 FR 4362 (January 26, 2016).

Vehicle Eligibility Number: VSP–578 (effective date March 3, 2016).

3. Docket No. NHTSA–2015–0080

Nonconforming Vehicles: 2009 Buell 1125R, Ulysses XB, Lightning XB, and Blast motorcycles.

Substantially Similar U.S. Certified Vehicles: 2009 Buell 1125R, Ulysses XB, Lightning XB, and Blast motorcycles.

Notice of Petition Published at: 81 FR 4363 (January 26, 2016).

Vehicle Eligibility Number: VSP–579 (effective date March 3, 2016).

4. Docket No. NHTSA–2015–0081

Nonconforming Vehicles: 2006 Mercedes-Benz SL passenger cars manufactured before September 1, 2006.

Substantially Similar U.S. Certified Vehicles: 2006 Mercedes-Benz SL passenger cars manufactured before September 1, 2006.

Notice of Petition Published at: 80 FR 67483 (November 2, 2015).

Vehicle Eligibility Number: VSP–574 (effective date December 11, 2015).

[FR Doc. 2016–11793 Filed 5–18–16; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
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Part II

Department of Energy

10 CFR Parts 429 and 430
Energy Conservation Program: Energy Conservation Standards for Compressors; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket Number EERE–2013–BT–STD–0040]

RIN 1904–AC83

Energy Conservation Program: Energy Conservation Standards for Compressors

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking (NOPR) and announcement of public meeting.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment. EPCA also authorizes DOE to establish standards for certain other types of industrial equipment, including compressors. Such standards must be technologically feasible and economically justified, and must save a significant amount of energy. In this document, DOE proposes energy conservation standards for compressors and announces a public meeting to receive comment on the proposed standards and associated analyses and results.

DATES: *Meeting:* DOE will hold a public meeting on Monday, June 20, 2016 from 1:00 p.m. to 5:00 p.m. in Washington, DC. The test procedure portion will be held in the morning. The meeting will also be broadcast as a webinar. See section VIII, "Public Participation," for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

Comments: DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than July 18, 2016. See section VIII, "Public Participation," for details.

Comments regarding the likely competitive impact of the proposed standard should be sent to the Department of Justice contact listed in the **ADDRESSES** section before June 20, 2016.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585.

Instructions: Any comments submitted must identify the NOPR on Energy Conservation Standards for compressors, and provide docket number EERE–2013–BT–STD–0040 and/or regulatory information number (RIN) 1904–AC83. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
2. *Email: AirCompressors2013STD0040@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.
3. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC, 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section VIII of this document ("Public Participation").

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Office of Energy Efficiency and Renewable Energy through the methods listed above and by email to *Chad_S_Whiteman@omb.eop.gov.*

EPCA requires the Attorney General to provide DOE with a written determination of whether the proposed standard is likely to lessen competition. The U.S. Department of Justice Antitrust Division invites input from market participants and other interested persons with views on the likely competitive impact of the proposed standard. Interested persons may contact the Division at *energy.standards@usdoj.gov* before June 20, 2016. Please indicate in the "Subject" line of your email the title and Docket Number of this rulemaking notice.

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index may not be publicly available, such as those containing information that is exempt from public disclosure.

A link to the docket Web page can be found at: *https://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-STD-0040.* This Web page contains a link to the docket for this document on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section VIII, "Public Participation," for further information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–8654. Email: *compressors@ee.doe.gov.*

Peter Cochran, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 586–9496. Email: *Peter.Cochran@hq.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

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I. Synopsis of the Proposed Rule

Title III of the Energy Policy and Conservation Act of 1975, as amended ("EPCA" or, in context, "the Act"), sets forth a variety of provisions designed to improve energy efficiency. (42 U.S.C. 6291, *et seq.*) Part C of Title III, which for editorial reasons was re-designated as Part A–1 upon incorporation into the U.S. Code (42 U.S.C. 6311–6317), establishes the "Energy Conservation Program for Certain Industrial Equipment." EPCA provides that DOE may include a type of industrial equipment as covered equipment if it determines that to do so is necessary to carry out the purposes of Part A–1. (42 U.S.C. 6312(b)). DOE has proposed such a determination for compressors, the subject of this document (see section II.A for further discussion).

EPCA authorizes DOE to prescribe energy conservation standards for those types of industrial equipment which the Secretary classifies as covered equipment. (42 U.S.C. 6311(2) and 6312). Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 6316(a)). Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B) and 6316(a)).

In accordance with the relevant EPCA provisions, DOE proposes new energy conservation standards for compressors. The proposed standards, which are expressed in terms of package isentropic efficiency (*i.e.*, a parameter used to measure the degree of degradation of energy in steady-flow devices), or the ratio of the theoretical isentropic power required for a compression process to the actual power required for the same process, are shown in Table I.1. Table I.2 through Table I.5 provide mathematical coefficients required to calculate package isentropic efficiency in Table I.1. For "Fixed-speed compressor" equipment classes, the relevant Package Isentropic Efficiency is Full-Load Package Isentropic Efficiency; for "Variable-speed compressor" equipment classes, the relevant Package Isentropic Efficiency is Part-Load Package Isentropic Efficiency. Both Full- and Part-Load Package Isentropic Efficiency are determined in accordance with the test methods proposed in the April 2016 Compressors Test Procedure Notice of Proposed Rulemaking ("test procedure NOPR") 81 FR 27220.[1] These proposed standards, if adopted, would apply to all compressors listed in Table I.1 and manufactured in, or imported into, the United States starting five years after the publication of the final rule for this rulemaking.

V_1 denotes the full-load actual volume flow rate[2] of the compressor, in actual cubic feet per minute ("acfm").[3] Standard levels are expressed as a function of full-load actual volume flow rate for each equipment class, and may be calculated by inserting values from rightmost two columns into the second leftmost column. Doing so will yield an efficiency-denominated function of actual volume flow rate in acfm.

TABLE I.1—PROPOSED ENERGY CONSERVATION STANDARDS FOR COMPRESSORS

Equipment class	Minimum package isentropic efficiency	η_{Regr} (package isentropic efficiency reference curve)	d (percentage loss reduction)
Rotary; Lubricated; Air-cooled; Fixed-speed.	$\eta_{Regr} + (1 - \eta_{Regr}) * (d/100)$	$-0.00928 * \ln(.472 * V_1)^2 + 0.139 * \ln(.472 * V_1) + 0.271$	−15
Rotary; Lubricated; Air-cooled; Variable-speed.	$\eta_{Regr} + (1 - \eta_{Regr}) * (d/100)$	$-0.0155 * \ln(.472 * V_1)^2 + 0.216 * \ln(.472 * V_1) + 0.00905$	−10
Rotary; Lubricated; Water-cooled; Fixed-speed.	$.0235 + \eta_{Regr} + (1 - \eta_{Regr}) * (d/100)$	$-0.00928 * \ln(.472 * V_1)^2 + 0.139 * \ln(.472 * V_1) + 0.271$	−15
Rotary; Lubricated; Water-cooled; Variable-speed.	$.0235 + \eta_{Regr} + (1 - \eta_{Regr}) * (d/100)$	$-0.0155 * \ln(.472 * V_1)^2 + 0.216 * \ln(.472 * V_1) + 0.00905$	−15
Rotary; Lubricant-free; Air-cooled; Fixed-speed.	$\eta_{Regr} + (1 - \eta_{Regr}) * (d/100)$	$A_1 * \ln(.472 * V_1)^2 + B_1 * \ln(.472 * V_1) + C_1$	−11
Rotary; Lubricant-free; Air-cooled; Variable-speed.	$\eta_{Regr} + (1 - \eta_{Regr}) * (d/100)$	$A_2 * \ln(.472 * V_1)^2 + B_2 * \ln(.472 * V_1) + C_2$	−13
Rotary; Lubricant-free; Water-cooled; Fixed-speed.	$A_3 * \ln(.472 * V_1)^2 + B_3 * \ln(.472 * V_1) + C_3 + \eta_{Regr} + (1 - \eta_{Regr}) * (d/100)$.	$A_1 * \ln(.472 * V_1)^2 + B_1 * \ln(.472 * V_1) + C_1$	−11
Rotary; Lubricant-free; Water-cooled; Variable-speed.	$A_4 * \ln(.472 * V_1)^2 + B_4 * \ln(.472 * V_1) + C_4 + \eta_{Regr} + (1 - \eta_{Regr}) * (d/100)$.	$A_2 * \ln(.472 * V_1)^2 + B_2 * \ln(.472 * V_1) + C_2$	−13

TABLE I.2—COEFFICIENTS FOR PROPOSED ENERGY CONSERVATION STANDARDS FOR ROTARY, LUBRICANT-FREE, AIR- AND WATER-COOLED, FIXED-SPEED COMPRESSORS

Full-load actual volume flow rate range (actual cubic feet per minute (acfm))	A_1	B_1	C_1
$0 \le V_1 \le 161$	−0.00928	0.139	0.191
$161 \le V_1 \le 2125$	0.00281	0.0344	0.417
$2125 \le V_1$	−0.00928	0.139	0.271

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[1] See *https://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/78*.

[2] The test procedure NOPR defines a term "actual volume flow rate" to characterize compressor output flow as "the volume flow rate of air, compressed and delivered at the standard discharge point, referred to conditions of total temperature, total pressure and composition prevailing at the standard inlet point." It also proposes a procedure for identifying a compressor's full-load actual volume flow rate.

[3] Actual cubic feet per minute ("acfm") is an industry convention that describes the actual volume of air emerging from a compressor, but expressed as though the air were allowed to expand to ambient conditions at the compressor inlet.

TABLE I.3—COEFFICIENTS FOR PROPOSED ENERGY CONSERVATION STANDARDS FOR ROTARY, LUBRICANT-FREE, AIR- AND WATER-COOLED, VARIABLE-SPEED COMPRESSORS

Full-Load Actual Volume Flow Rate Range (acfm)	A_2	B_2	C_2
$0 \le V_1 \le 102$	−0.0155	0.216	−0.0984
$102 \le V_1 \le 1426$	0.000	0.0958	0.134
$1426 \le V_1$	−0.0155	0.216	0.00905

TABLE I.4—COEFFICIENTS FOR PROPOSED ENERGY CONSERVATION STANDARDS FOR ROTARY, LUBRICANT-FREE, WATER-COOLED, FIXED-SPEED COMPRESSORS

Full-Load Actual Volume Flow Rate Range (acfm)	A_3	B_3	C_3
$0 \le V_1 < 102$	0	0	0
$102 \le V_1$	−0.00924	0.117	−0.315

TABLE I.5—COEFFICIENTS FOR PROPOSED ENERGY CONSERVATION STANDARDS FOR ROTARY, LUBRICANT-FREE, WATER-COOLED, VARIABLE-SPEED COMPRESSORS

Full-Load Actual Volume Flow Rate Range (acfm)	A_4	B_4	C_4
$0 \le V_1 < 74$	0	0	0
$74 \le V_1$	0.000173	0.00783	−0.0300

DOE has tentatively concluded that the proposed standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. DOE further notes that air compressors achieving these standard levels are already commercially available for all proposed equipment classes. Based on the analyses described in this preamble, DOE has tentatively concluded that the benefits of the proposed standards to the nation (energy savings, positive NPV of consumer benefits, consumer LCC savings, and emission reductions) would outweigh the burdens (large loss of INPV for manufacturers and LCC increases for some consumers).

DOE is also seriously considering the adoption of a more-stringent energy efficiency standard in this rulemaking. Based on consideration of the public comments DOE receives in response to this notice and related information collected and analyzed during the course of this rulemaking effort, DOE may adopt energy efficiency levels presented in this notice that is higher than the proposed standards, or some combination of level(s) that incorporate the proposed standards in part. As discussed in more detail in section V.C.1, DOE is strongly considering a TSL 3 standard for a compressor standard as an option with greater than two times the annual net benefits of DOE's current proposed TSL 2.

The proposed standards correspond to trial standard level (TSL) 2. As discussed in section V.C, DOE has tentatively concluded that TSL 3, which is comprised of more stringent energy efficiency standards than TSL 2, is not economically justified. However, because TSL 3 has significant benefits, including much higher national energy savings, national NPV, and emissions reductions than those resulting from TSL 2 (see Table V.36), DOE is still considering the merits of standards at TSL 3. Accordingly, DOE invites comments on whether DOE should adopt standards for compressors at TSL 3 instead of at TSL 2. This is identified as Issue 1 in section VIII.E, "Issues on Which DOE Seeks Comment."

A. Benefits and Costs to Consumers

Table I.6 presents DOE's evaluation of the economic impacts of the proposed standards on end users of compressors, as measured by the average life-cycle cost (LCC) savings and the simple payback period (PBP).[4] The average LCC savings are positive for all equipment classes for which a standard has been proposed, and the PBP is less than the average lifetime of compressors, which is estimated to be between 9 to 13 years (see section IV.F.6).

TABLE I.6—IMPACTS OF PROPOSED ENERGY CONSERVATION STANDARDS ON END USERS OF COMPRESSORS

Equipment Class	Average LCC Savings *(2015$)*	Simple Payback Period *(years)*
Rotary, Fixed Speed, Lubricated, Air Cooled (RP_FS_L_AC)	$8,902	1.7
Rotary, Fixed Speed, Lubricated, Water Cooled (RP_FS_L_WC)	15,011	2.4
Rotary, Fixed Speed, Lubricant-Free Air Cooled (RP_FS_LF_AC) *	n.a.	n.a.
Rotary, Fixed Speed, Lubricant-Free Water Cooled (RP_FS_LF_WC) *	n.a.	n.a.
Rotary, Variable Speed, Lubricated, Air Cooled (RP_VS_L_AC)	6,061	2.5

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[4] The average LCC savings are measured relative to the no-new standards case efficiency distribution in the no-new-standards case, which depicts the market in the compliance year in the absence of standards (see section IV.F.9). The simple PBP, which is designed to compare specific efficiency levels, is measured relative to the baseline model (see section IV.C.1.a).

TABLE I.6—IMPACTS OF PROPOSED ENERGY CONSERVATION STANDARDS ON END USERS OF COMPRESSORS—Continued

Equipment Class	Average LCC Savings (*2015$*)	Simple Payback Period (*years*)
Rotary, Variable Speed, Lubricated, Water Cooled (RP_VS_L_WC)	13,865	3.4
Rotary, Variable Speed, Lubricant-Free Air Cooled (RP_VS_LF_AC) *	n.a.	n.a.
Rotary, Variable Speed, Lubricant-Free Water Cooled (RP_VS_LF_WC) *	n.a.	n.a.
Reciprocating, Single-Phase, Lubricated (R1_FS_L_XX) **	n.a.	n.a.
Reciprocating, Three-Phase, Lubricated (R3_FS_L_XX) **	n.a.	n.a.

* No increase in efficiency is proposed for this equipment class.
** No new standard is proposed for this equipment class.

DOE's analysis of the impacts of the proposed standards on end users is described in section V.B.1 of this document.

B. Impact on Manufacturers

The industry net present value (INPV) is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2015 to 2051). Using a real discount rate of 8.7 percent, DOE estimates that the INPV for manufacturers of compressors in the case without standards is $497.1 million in 2014$. Under the proposed standards, DOE expects that manufacturers may lose up to 11.6 percent of this INPV, or approximately $57.8 million.

DOE's analysis of the impacts of the proposed standards on manufacturers is described in section IV.J of this document.

C. National Benefits and Costs[5]

DOE's analyses indicate that the proposed energy conservation standards for compressors would save a significant amount of energy. Relative to the case without new standards, the lifetime energy savings for compressors purchased in the 30-year period that begins in the anticipated first full year of compliance with the new standards (2022–2051)[6] amount to 0.18 quadrillion British thermal units (Btu), or quads.[7] This represents a savings of 0.4 percent relative to the energy use of these equipment in the case without new standards (referred to as the "no-new-standards case").

The cumulative net present value (NPV) of total consumer costs and savings of the proposed standards for compressors ranges from $0.21 billion (at a 7-percent discount rate) to $0.62 billion (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased equipment costs for compressors purchased in 2022–2051.

In addition, the proposed standards for compressors would have significant environmental benefits. DOE estimates that the proposed standards would result in cumulative emission reductions (over the same period as for energy savings) of 10.6 million metric tons (Mt)[8] of carbon dioxide (CO_2), 5.8 thousand tons of sulfur dioxide (SO_2), 19.5 thousand tons of nitrogen oxides (NO_X), 46.7 thousand tons of methane (CH_4), 0.1 thousand tons of nitrous oxide (N_2O), and 0.02 tons of mercury (Hg).[9] The cumulative reduction in CO_2 emissions through 2030 amounts to 1.2 Mt, which is equivalent to the emissions resulting from the annual electricity use of 0.11 million homes.

The value of the CO_2 reductions is calculated using a range of values per metric ton of CO_2 (otherwise known as the Social Cost of Carbon, or SCC) developed by a recent Federal interagency process.[10] The derivation of the SCC values is discussed in section IV.L. Using discount rates appropriate for each set of SCC values (see Table I.X), DOE estimates the present monetary value of the CO_2 emissions reduction (not including CO_2 equivalent emissions of other gases with global warming potential) is between $0.06 billion and $0.99 billion, with a value of $0.32 billion using the central SCC case represented by $40.0/t in 2015. DOE also estimates the present monetary value of the NO_X emissions reduction to be $0.01 billion at a 7-percent discount rate and $0.03 billion at a 3-percent discount rate.[11] DOE is investigating appropriate valuation of the reduction in methane and other emissions, and did not include any values in this rulemaking.

Table I.7 summarizes the economic benefits and costs expected to result from the proposed standards for compressors.

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[5] All monetary values in this document are expressed in 2015 dollars and, where appropriate, are discounted to 2015 unless explicitly stated otherwise. Energy savings in this section refer to the full-fuel-cycle savings (see section IV.H for discussion).

[6] The analysis uses January 1st, 2022 to represent the expected compliance date in late 2021. Therefore, the 30-year analysis period is referred to as 2022–2051.

[7] The quantity refers to full-fuel-cycle (FFC) energy savings. FFC energy savings includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.*, coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, see section IV.H.1.

[8] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons.

[9] DOE calculated emissions reductions relative to the no-new-standards case, which reflects key assumptions in the *Annual Energy Outlook 2015* (*AEO 2015*) Reference case. *AEO 2015* generally represents current legislation and environmental regulations for which implementing regulations were available as of October 31, 2014.

[10] United States Government—Interagency Working Group on Social Cost of Carbon. *Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866*. May 2013. Revised July 2015. *https://www.whitehouse.gov/sites/default/files/omb/inforeg/scc-tsd-final-july-2015.pdf*.

[11] DOE estimated the monetized value of NO_X emissions reductions associated with electricity savings using benefit per ton estimates from the Regulatory Impact Analysis for the Clean Power Plan Final Rule, published in August 2015 by EPA's Office of Air Quality Planning and Standards. Available at *http://www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis*. See section IV.L.2 for further discussion. The U.S. Supreme Court has stayed the rule implementing the Clean Power Plan until the current litigation against it concludes. *Chamber of Commerce, et al.* v. *EPA, et al.*, Order in Pending Case, 136 S.Ct. 999 (Mem). However, the benefit-per-ton estimates established in the Regulatory Impact Analysis for the Clean Power Plan are based on scientific studies that remain valid irrespective of the legal status of the Clean Power Plan. Note that DOE is primarily using a national benefit-per-ton estimate for NO_X emitted from the Electricity Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski et al. 2009). If the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al. 2011), the values would be nearly two-and-a-half times larger.

TABLE I.7.—SUMMARY OF ECONOMIC BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR COMPRESSORS

[TSL 2]*

Category	Present value (*billion 2015$*)	Discount rate (percent)
Benefits:		
Consumer Operating Cost Savings	0.3	7
	0.8	3
CO_2 Reduction (using mean SCC at 5% discount rate)**	0.1	5
CO_2 Reduction (using mean SCC at 3% discount rate)**	0.3	3
CO_2 Reduction (using mean SCC at 2.5% discount rate)**	0.5	2.5
CO_2 Reduction (using 95th percentile SCC at 3% discount rate)**	1.0	3
NO_X Reduction †	0.0	7
	0.0	3
Total Benefits ‡	0.7	7
	1.2	3
Costs:		
Consumer Incremental Installed Costs	0.1	7
	0.2	3
Total Net Benefits:		
Including CO_2 and NO_X Reduction Monetized Value ‡	0.6	7
	1.0	3

* This table presents the costs and benefits associated with compressors shipped in 2022−2051. These results include benefits to consumers which accrue after 2048 from the equipment purchased in 2022−2051. The costs account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule.

** The interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from the integrated assessment models, at discount rates of 5%, 3%, and 2.5%. For example, for 2015 emissions, these values are $12.4/t, $40.6/t, and $63.2/t, in 2015$, respectively. The fourth set ($118/t in 2015$ for 2015 emissions), which represents the 95th percentile of the SCC distribution calculated using a 3% discount rate, is included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution. The SCC values are emission year specific. See section IV.L.1 for more details.

† DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the *Regulatory Impact Analysis for the Clean Power Plan Final Rule,* published in August 2015 by EPA's Office of Air Quality Planning and Standards. (Available at: *http://www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.*) See section IV.L.2 for further discussion. Note that DOE is primarily using a national benefit-per-ton estimate for NO_X emitted from the Electricity Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski et al., 2009). If the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al., 2011), the values would be nearly two-and-a-half times larger.

‡ Total Benefits for both the 3% and 7% cases are presented using only the average SCC with 3-percent discount rate.

The benefits and costs of the proposed standards, for compressors sold in 2022–2051, can also be expressed in terms of annualized values. The monetary values for the total annualized net benefits are the sum of: (1) The national economic value of the benefits in reduced consumer operating costs, minus (2) the increase in equipment purchase prices and installation costs, plus (3) the value of the benefits of CO_2 and NO_X emission reductions, all annualized.[12]

The national operating savings are domestic U.S. consumer monetary savings that occur as a result of purchasing the covered products. The national operating cost savings is measured for the lifetime of compressors shipped in 2022–2051. The CO_2 reduction is a benefit that accrues globally due to decreased domestic energy consumption that is expected to result from this rule. Because CO_2 emissions have a very long residence time in the atmosphere, the SCC values in future years reflect future CO_2-emissions impacts that continue beyond 2100 through 2300.

Estimates of annualized benefits and costs of the proposed standards are shown in Table I.8. The results under the primary estimate are as follows.

Using a 7-percent discount rate for benefits and costs other than CO_2 reduction (for which DOE used a 3-percent discount rate along with the average SCC series that has a value of $40.0/t in 2015), the estimated cost of the standards proposed in this rule is 10.4 million per year in increased equipment costs, while the estimated annual benefits are $36.0 million in reduced equipment operating costs, $19.2 million in CO_2 reductions, and $1.4 million in reduced NO_X emissions. In this case, the net benefit amounts to $46 million per year.

Using a 3-percent discount rate for all benefits and costs and the average SCC series that has a value of $40.0/t in 2015, the estimated cost of the proposed standards is $10.9 million per year in increased equipment costs, while the estimated annual benefits are $48.4 million in reduced operating costs, $19.2 million in CO_2 reductions, and $2.0 million in reduced NO_X emissions. In this case, the net benefit amounts to $59 million per year.

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[12] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2016, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.,* 2020 or 2030), and then discounted the present value from each year to 2016. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates, as shown in Table I.3. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year that yields the same present value.

TABLE I.8—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR COMPRESSORS

[TSL 2]

	Discount rate	Million 2015$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
		Benefits		
Consumer Operating Cost Savings	7%	36.0	29.3	43.7
	3%	48.4	38.9	60.4
CO_2 Reduction (using mean SCC at 5% discount rate) **.	5%	5.7	4.8	6.9
CO_2 Reduction (using mean SCC at 3% discount rate) **.	3%	19.2	16.0	23.2
CO_2 Reduction (using mean SCC at 2.5% discount rate) **.	2.5%	28.1	23.3	33.9
CO_2 Reduction (using 95th percentile SCC at 3% discount rate) **.	3%	58.5	48.6	70.6
NO_X Reduction †	7%	1.4	1.2	3.7
	3%	2.0	1.6	5.4
Total Benefit ††	7% plus CO_2 range	43 to 96	35 to 79	54 to 118
	7%	57	46	71
	3% plus CO_2 range	56 to 109	45 to 89	73 to 136
	3%	70	57	89
		Costs		
Consumer Incremental Installed Equipment Costs.	7%	10.4	8.9	11.8
	3%	10.9	9.2	12.4
		Net Benefits		
Total ††	7% plus CO_2 range	33 to 85	26 to 70	42 to 106
	7%	46	38	59
	3% plus CO_2 range	45 to 98	36 to 80	60 to 124
	3%	59	47	77

* This table presents the annualized costs and benefits associated with compressors shipped in 2022−2051. These results include benefits to consumers which accrue after 2051 from the equipment purchased in 2022–2051. The Primary, Low Benefits, and High Benefits Estimates utilize projections of energy prices from the *AEO 2015* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental product costs reflect a constant trend in the Primary Estimate, an increasing trend in the Low Benefits Estimate, and a decreasing trend in the High Benefits Estimate. The methods used to derive projected price trends are explained in section IV.H.1.]. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

** The CO_2 reduction benefits are calculated using 4 different sets of SCC values. The first three use the average SCC calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC values are emission year specific. See section IV.L.1 for more details.

† DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the *Regulatory Impact Analysis for the Clean Power Plan Final Rule,* published in August 2015 by EPA's Office of Air Quality Planning and Standards. (Available at: *http://www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.)* See section IV.L.2 for further discussion. For DOE's Primary Estimate and Low Net Benefits Estimate, the agency is using a national benefit-per-ton estimate for NO_X emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski et al., 2009). For DOE's High Net Benefits Estimate, the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al., 2011), which are nearly two-and-a-half times larger than those from the ACS study.

†† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to the average SCC with a 3-percent discount rate ($40.0/t case). In the rows labeled "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

DOE's analysis of the national impacts of the proposed standards is described in sections IV.H, IV.K and IV.L of this document.

D. Conclusion

DOE has tentatively concluded that the proposed standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. DOE further notes that air compressors achieving these standard levels are already commercially available for all proposed equipment classes. Based on the analyses described in this preamble, DOE has tentatively concluded that the benefits of the proposed standards to the nation (energy savings, positive NPV of consumer benefits, consumer LCC savings, and emission reductions) would outweigh the burdens (large loss of INPV for manufacturers and LCC increases for some consumers).

DOE is also seriously considering the adoption of a more -stringent energy efficiency standard in this rulemaking. Based on consideration of the public comments DOE receives in response to this notice and related information collected and analyzed during the course of this rulemaking effort, DOE may adopt energy efficiency levels presented in this notice that is higher than the proposed standards, or some combination of level(s) that incorporate the proposed standards in part. As discussed in more detail in section V.C.1, DOE is strongly considering a TSL 3 standard for a compressor standard as an option with greater than two times the annual net benefits of DOE's current proposed TSL 2.

II. Introduction

The following section briefly discusses the statutory authority underlying this proposed rule, as well as some of the relevant historical background related to the establishment of standards for compressors.

A. Authority

EPCA provides that DOE may include a type of industrial equipment, including compressors, as covered equipment if it determines that to do so is necessary to carry out the purposes of Part A–1. (42 U.S. 6311(2)(B)(i) and 6312(b)). The purpose of Part A–1 is to improve the efficiency of electric motors and pumps and certain other industrial equipment in order to conserve the energy resources of the Nation. (42 U.S.C. 6312(a)). DOE has proposed to determine that because (1) DOE may only prescribe energy conservation standards for covered equipment; and (2) energy conservation standards for compressors would improve the efficiency of such equipment more than would be likely to occur in the absence of standards, including compressors as covered equipment is necessary to carry out the purposes of Part A–1. 77 FR 76972 (Dec. 31, 2012).

Pursuant to EPCA, any new or amended energy conservation standard for compressors must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 6316(a)). Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B) and 6316(a)).

Pursuant to EPCA, DOE's energy conservation program for covered products consists essentially of four parts: (1) Testing; (2) labeling; (3) the establishment of Federal energy conservation standards; and (4) certification and enforcement procedures. For commercial and industrial products, DOE is primarily responsible for labeling requirements. Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6295(o)(3)(A) and 6314) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c), 6295(s) and 6316(a)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s) and 6316(a)) There are currently no DOE test procedures for compressors. DOE issued a test procedure NOPR for Compressors in April 2016. Upon finalization, any DOE test procedure for compressors will appear at title 10 of the Code of Federal Regulations (CFR) part 431, subpart T, appendix A.

DOE follows specific statutory criteria for prescribing new or amended standards for covered equipment, including compressors. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6316(a), and 6295(o)(2)(A) and (3)(B)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3) and 6316(a)) Moreover, DOE may not prescribe a standard: (1) For certain products, including compressors, if no test procedure has been established for the product, or (2) if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(A)–(B) and 6316(a)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i) and 6316(a)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII) and 6316(a))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii) and 6316(a))

EPCA, as codified, also contains what is known as an "anti-backsliding" provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1) and 6316(a)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4) and 6316(a))

Additionally, 42 U.S.C. 6295(q)(1) and 6316(a) specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. DOE must specify a different standard level for a type or class of product that has the same function or intended use, if DOE determines that products within such group: (A) Consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1) and 6316(a)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2) and 6316(a))

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c) and 6316(a)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6297(d) and 6316(a)).

B. Background

1. Current Standards

DOE does not currently have a test procedure or energy conservation standard for compressors. In considering whether to establish standards for compressors, DOE issued a Proposed Determination of Coverage on December 31, 2012. 77 FR 76972.

2. History of Standards Rulemaking for Compressors

DOE initiated its rulemaking efforts to examine the possibility of setting energy conservation standards for compressors by publishing a notice that announced the availability of a framework document and a public meeting to discuss that document and invite comment from interested parties.[13] 79 FR 06839. The Framework Document described the procedural and analytical approaches that DOE anticipated using to evaluate energy conservation standards for compressors, and also identified and solicited comment on various issues to be resolved in the rulemaking. DOE held that public meeting on March 3, 2014. Comments received both in response to the Framework Document and public meeting are discussed later in this document. In April 2016, DOE published a Notice of Proposed Rulemaking to address a potential test procedure for compressors.[14]

III. General Discussion

DOE developed this proposal after considering verbal and written comments, data, and information from interested parties representing a variety of interests. The following discussion addresses issues raised by these commenters. Commenters, are listed in Table III.1.

TABLE III.1—COMMENTERS AND AFFILIATION

Commenter	Affiliation
Air-Conditioning, Heating, and Refrigeration Institute	Trade Association.
American Council for an Energy Efficient Economy	Advocacy Organization.
Appliance Standards Awareness Project	Advocacy Organization.
Association of Equipment Manufacturers	Trade Association.
Atlas Copco	Manufacturer.
California Investor Owned Utilities (Pacific Gas and Electric Company, San Diego Gas, Southern California Edison)	Utility Association.
Compressed Air and Gas Institute	Trade Association.
Edison Electric Institute	Utility Association.
G.H.S. Corporation (parent to Saylor-Beall and Sullivan-Palatek)	Manufacturer.
Ingersoll-Rand	Manufacturer.
Jenny Products, Inc	Manufacturer.
Kaeser Compressors	Manufacturer.
Natural Resource Defense Council	Advocacy Organization.
Northwest Energy Efficiency Alliance	Utility Association.
Southern California Gas Company	Utility.
Sullair Distributor Council	Manufacturer.
Sullair, LLC	Manufacturer.
William Scales, P.E	Consultant.

A. Definition of Covered Equipment

Although compressors are listed as one type of industrial equipment under 42 U.S.C. 6311(2) that DOE may regulate provided certain conditions are met, the term "compressor" is not defined in EPCA. In the Framework Document, DOE introduced a possible a definition for "compressor" which centered on a mechanical device that uses a pressure ratio of 1.1.[15] This value had the possible advantage of consistency with International Organization for Standardization (ISO) Technical Report 12942:2012, "Compressors—Classification—Complementary information to ISO 5390" (ISO/TR 12942:2012).

In response to the Framework Document, the American Council for an Energy-Efficient Economy (ACEEE), the Appliance Standards Awareness Project (APSP), the Northwest Energy Efficiency Alliance (NEEA), and the Alliance to Save Energy (ASE) (hereafter referred to as the Joint Commenters), as well as the National Resources Defense Council (NRDC), and the California Investor Owned Utilities (CAIOU) recommended that, with respect to pressure-increase ratio, DOE take, as a lower limit for compressors, the upper limit (1.2) for Commercial and Industrial Fans and Blowers suggested in that equipment's 2013 Framework Document.[16] (Joint Comment, No. 0016 at p. 1; NRDC, No. 0019 at p. 1; CAIOU, No. 0018 at p. 2) The commenters noted that this would avoid creating a coverage gap, wherein certain air processing equipment would be uncovered if its pressure ratio fell between the respective scope limit of fans/blowers and compressors. (Docket No. EERE–2013–BT–STD–0006) DOE agreed that no gap in coverage should exist between this and the fans and blowers rulemaking and proposed a definition for "compressor" with a pressure ratio of 1.3 in the test procedure NOPR as follows:

"Compressor" means a machine or apparatus that converts different types of energy into the potential energy of gas pressure for displacement and compression of gaseous media to any higher pressure values above atmospheric pressure and has a pressure ratio[17] greater than 1.3.

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[13] Available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0040-0002.*

[14] Available at: *https://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/78.*

[15] DOE has previously used both the terms "pressure ratio" and "pressure-increase ratio" to refer to the ratio of absolute discharge pressure to absolute inlet pressure. DOE notes that, while it considers the terms to mean the same thing, only "pressure ratio" will be used in this document in order to preserve clarity.

[16] *http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0006-0001.*

In order to objectively and unambiguously determine which equipment meets the definition of "compressor," DOE also proposed, in the test procedure NOPR, a definition of the term "pressure ratio" as "the ratio of discharge pressure to inlet pressure, determined at full-load operating pressure . . ." Such a definition allows DOE to quantitatively establish which equipment meet the pressure ratio requirement proposed in the definition of compressor.

This definition of "pressure ratio" relies on the terms discharge pressure and inlet pressure. Definitions for these, and several other technical terms specific to testing of compressors are established in of ISO 1217:2009 and DOE proposed in the test procedure NOPR to adopt those definitions as part of incorporating by reference certain portions of ISO 1217:2009.

B. Scope of the Energy Conservation Standards in This Rulemaking

DOE notes that while the definition of "compressor," as proposed in the test procedure NOPR, is broad, the styles of compressors to which the proposed test procedure applies would be limited to a more narrow range of equipment. Specifically, after consideration of feedback from interested parties, as well as DOE research, DOE limited the scope of analysis of this document to compressors that meet the following criteria:

- Are air compressors, as described in section III.B.1,
- Are rotary or reciprocating compressors, as described in section III.B.3,
- Are driven by a brushless electric motor, as described in section III.B.4,
- Are distributed in commerce with a compressor motor nominal horsepower greater than or equal to 1 and less than or equal to 500 horsepower (hp), as described in section III.B.4, and
- Operate at a full-load operating pressure of greater than or equal to 31 and less than or equal to 225 pounds per square inch gauge (psig), as defined in section III.B.6.

DOE notes that ultimately, based on the results of the analyses performed for this NOPR, DOE does not propose to establish energy conservation standards for reciprocating compressors in this document. Section V provides further details on this decision. Consequently, the complete scope of the energy conservation standards proposed in this rulemaking is as follows:

- Are air compressors, as described in section III.B.1,
- Are rotary compressors, as described in section III.B.3,
- Are driven by a brushless electric motor, as described in section III.B.4,
- Are distributed in commerce with a compressor motor nominal horsepower greater than or equal to 1 and less than or equal to 500 horsepower (hp), as described in section III.B.4, and
- Operate at a full-load operating pressure of greater than or equal to 31 and less than or equal to 225 pounds per square inch gauge (psig), as defined in section III.B.6.

The following subsections discuss interested party comments related to the DOE's scope of analysis and ultimate scope of proposed energy conservation standards.

1. Equipment System Boundary

In the Framework Document, DOE discussed three separate boundary levels of compressor equipment—"bare" compressor, compressor "package," and compressed air system (CAS)—and requested comment regarding the feasibility of covering each boundary level of compressor equipment. Saylor-Beall commented that "while it might be possible to rate the air compressor package, attention needs to be given to the entire compressed air system of the end user;" whereas, Jenny Compressors ("Jenny") stated that "covering the entire 'CAS' may prove nearly impossible since many systems include components from many different manufacturers, and no two systems are the same." (Saylor-Beall, No. 0003 at p. 2; Jenny, No. 0005 at p. 2) Compressed Air and Gas Institute (CAGI) and the Joint Commenters agreed that DOE should cover the compressor package as part of this rulemaking. (CAGI, No. 0009 at p. 3; Joint Comment, No. 0016 at p. 2) the Joint Commenters also stated that, if DOE covers the package, DOE would need to ensure companies that assemble packages from purchased components are also covered under this rulemaking. (Joint Comment, No. 0016 at p. 2–3) In this NOPR, DOE proposes to align with the scope of applicability of the test procedure NOPR and cover the compressor "package." DOE considers covering a "bare" compressor to represent significantly lower energy savings compared to the other two compressor equipment levels. DOE also understands that, while the CAS represents the largest available energy savings, covering the CAS has significant drawbacks that weigh against its adoption as the basis for an equipment classification for the following reasons:

- Each CAS is often unique to a specific installation;
- Each CAS may include equipment from several different manufacturers; and
- A single CAS can include several different compressors, of different types, which may all have different full-load operating pressures.

Implementing a broader, CAS-based approach to compressor efficiency would require DOE to (1) establish a methodology for measuring losses in a given air-distribution network; and (2) assess what certification, compliance, or enforcement practices would be required for a large variety of system designs, and potential waiver criteria. For these reasons, DOE does not believe the CAS to be a viable equipment classification for coverage and proposes to cover only compressor "packages."

In the test procedure NOPR, DOE proposed to use the following definition for "air compressor," which is based on the concept of a compressor package and borrows language from the definitions used by the European Union's (EU) Lot 31 Ecodesign Study on Compressors ("Lot 31 Study," discussed further in section IV.A.2):

"Air compressor" means a compressor designed to compress air that has an inlet open to the atmosphere or other source of air, and is made up of a compression element (bare compressor), driver(s), mechanical equipment to drive the compressor element, and any ancillary equipment.

Also in the test procedure NOPR, DOE proposed the following definitions which give meaning to terms used in the definition of "air compressor":

"Bare compressor" means the compression element and auxiliary devices (*e.g.*, inlet and outlet valves, seals, lubrication system, and gas flow paths) required for performing the gas compression process, but does not include the driver; speed-adjusting gear(s); gas processing apparatuses and piping; or compressor equipment packaging and mounting facilities and enclosures.[18]

"Driver" means the machine providing mechanical input to drive a bare compressor directly or through the use of mechanical equipment.

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[17] DOE proposes to use terminology consistent with ISO 1217:2009 in describing the ratio of discharge to inlet pressures as "pressure ratio," as opposed to "pressure-increase ratio," which is the term used in some other industry documents. However, for the purpose of this document "pressure-increase ratio" and "pressure ratio" are synonymous.

[18] The compressor industry frequently uses the term "air-end" or "air end" to refer to the bare compressor. DOE uses "bare compressor" in the regulatory text of this proposed rule but clarifies that, for the purposes of this rulemaking, it considers the terms to be synonymous.

"Mechanical equipment" means any component of an air compressor that transfers energy from the driver to the bare compressor.

"Ancillary equipment" means any equipment distributed in commerce with an air compressor that is not a bare compressor, driver, or mechanical equipment. Ancillary equipment is considered to be part of a given air compressor, regardless of whether the ancillary equipment is physically attached to the bare compressor, driver, or mechanical equipment at the time when the air compressor is distributed in commerce.

DOE seeks comment on its proposal to limit the scope of energy conservation standard proposed in this document to only equipment that is made up of a compression element (bare compressor), driver(s), mechanical equipment to drive the compressor element, and any ancillary equipment (*i.e.*, a "packaged compressor"), through the use of the defined term, "air compressors." This is identified as Issue 2 in section VIII.E, "Issues on Which DOE Seeks Comment."

2. Compressed Gas

Broadly, compressors are used to compress a wide variety of gases. In the Framework Document,[19] DOE requested comment on limiting the scope to only "air compressors" and stated that information gathered to that point indicated that non-air compressing equipment accounted for a relatively small fraction of the overall compressors market, in terms of both shipments and annual energy consumption. DOE received conflicting feedback on the topic from stakeholders. The Edison Electric Institute (EEI) recommended covering all compressor types regardless of gas type because natural gas compressor energy use is projected to increase, while CAGI agreed that DOE should cover only air compressors. (EEI, No. 0012 at p. 1–2; CAGI, No. 0009 at p. 1) The Air-Conditioning, Heating, and Refrigeration Institute (AHRI) requested that compressors used in heating, ventilation, and air-conditioning (HVAC) equipment be specifically excluded. (AHRI No. 0015, at p. 1)

After the publication of the Framework Document, DOE announced several new initiatives to modernize the country's natural gas transmission and distribution infrastructure, including one to explore establishing efficiency standards for natural gas compressors.[20] As part of that effort, DOE's Appliance Standards Program published a Request for Information (RFI), on August 5, 2014, to help determine both the feasibility of energy conservation standards for natural gas compressors and whether they are similar enough to air compressors to be considered within the scope of this rulemaking. 79 FR 25377. Additionally, DOE announced the availability of some preliminary, high-level description of the market and technology for natural gas compressors. DOE also published a notice of public meeting[21] (NOPM), held on December 17, 2014, to present and seek comment on the content of that data. Based upon the feedback received from the RFI, NOPM, and public meeting, DOE opted to consider natural gas compressors separately from air compressors. (Docket No. EERE–2014–BT–STD–0051)

Regarding refrigerant compressors, DOE considers refrigerant compressors to have the same basic function as air compressors in that they both compress a working fluid to a higher pressure, but with the working fluid of refrigerant compressors being refrigerant instead of air. Refrigerant compressors are usually only included in equipment where cooling or heating is required, such as heating, ventilation, air-conditioning and refrigeration (HVACR) equipment. Similar to natural gas compressors, DOE has determined that refrigerant compressors serve a specific and unique application and also necessitate unique standards. As a result, DOE has opted not to consider refrigerant compressors in this rulemaking.

Furthermore, DOE's research found no large market segments or applications for compressor equipment used on gases other than air or natural gas. Information gathered during confidential manufacturer interviews indicated that non-air and non-natural gas compressing equipment represented relatively low sales volume and annual energy consumption.

Because air compressors comprise a significant portion of the compressor market and DOE intends to consider natural gas equipment as part of a separate rulemaking,[22] DOE proposes to consider standards for only air compressors in this rulemaking. DOE believes that compressors for other fluids serve different applications and are technically very different equipment than air compressors. As a result, compressors for gases other than air would likely require separate test procedures and energy conservation standards analyses. Consequently, DOE proposes to align with the scope of applicability of the test procedure NOPR, and limit the scope of energy conservation standards to only compressors that are designed to compress air and that have inlets open to the atmosphere or other source of air, through the use of the defined term, "air compressors." As discussed in Section III.B.1, DOE proposed a definition for the term "air compressor" in the test procedure NOPR.

DOE seeks comment on its proposal to limit the scope of energy conservation standard proposed in this document to only compressors that are designed to compress air and that have inlets open to the atmosphere or other source of air, through the use of the defined term, "air compressors." This is identified as Issue 3 in section VIII.E, "Issues on Which DOE Seeks Comment."

3. Compression Principle

Compressor equipment can be classified by compression principle, and on that basis can include dynamic compressors, rotary compressors, and reciprocating compressors. In the Framework Document, DOE offered definitions for each:

"Dynamic compressor" means "a compressor in which the gas pressure increase is achieved in continuous flow essentially by increasing its kinetic energy in the flow path of the machine due to acceleration to the high velocities by mechanical action of blades placed on a rapid rotating wheel and further transformation of the kinetic energy into the potential energy of the elevated pressure by successive deceleration of the said flow." The definition for dynamic compressor is consistent with the definition included in ISO/TR 12942:2012 and aligns with industry standards.

"Rotary compressor" means "a positive displacement compressor in which gas admission and diminution of its successive volumes or its forced discharge are performed cyclically by rotation of one or several rotors in a compressor casing." The definition for rotary compressor is consistent with the definition included in ISO/TR 12942:2012 and aligns with industry standards.

"Reciprocating compressor" means "a positive displacement compressor in which gas admission and diminution of its successive volumes are performed cyclically by straight-line alternating movements of a moving member(s) in a compression chamber(s)." The definition for reciprocating compressor is consistent with the definition included in ISO/TR 12942:2012 and aligns with industry standards.

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[19] Available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0040-0001.*

[20] See: *http://energy.gov/articles/department-energy-announces-steps-help-modernize-natural-gas-infrastructure.*

[21] Available at: *http://www.regulations.gov/?s#!documentDetail;D=EERE-2014-BT-STD-0051-0005.*

[22] Docket viewable here: *http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-STD-0051.*

DOE's test procedure NOPR proposes those definitions for "rotary compressor," and "reciprocating compressor," and added a proposed definition for "positive-displacement compressor." The test procedure NOPR did not propose a definition for "dynamic compressor," as no test methods were proposed for equipment commonly referred to as "dynamic compressors." In the test procedure NOPR, the term "positive-displacement compressor" is proposed to mean "a compressor in which the admission and diminution of successive volumes of the gaseous medium are performed periodically by forced expansion and diminution of a closed space(s) in a working chamber(s) by means of displacement of a moving member(s) or by displacement and forced discharge of the gaseous medium into the high-pressure area."

In response to the Framework Document, several stakeholders agreed that DOE should cover all three compressor types. (Joint Comment, No. 0016 at p. 2; CAGI, No. 0009 at p. 1) Scales commented that DOE should focus on centrifugal and rotary screw compressors above 350–hp. (W. Scales, No. 0020 at p. 1) DOE also received annual shipments data in industry stakeholder submittals. This shipments data are discussed in detail in section IV.G. DOE used these data to estimate the overall size of the air compressors market. The shipments data for 2013 provided to DOE suggest that rotary and reciprocating compressors account for the majority of the air compressors market by units shipped. By contrast, dynamic compressors account for fewer than 300 total units shipped, or roughly one percent of the total market.

DOE research indicated that dynamic compressors are typically larger in power than positive displacement compressors, and commonly engineered specifically for an order. Due to specialization and size, little cost and performance data are publicly available, as both will vary from unit to unit. Further, DOE found that the standard international test procedure for dynamic compressors, ISO 5389, was considered complicated and not widely used by industry. This fact may also contribute to the general lack of publicly available performance data.

Due to the lack of available data and relatively small market share of dynamic compressors, DOE did not include dynamic compressors within the scope of analysis of this energy conservation standards rulemaking; rather, DOE aligned with the scope of applicability of the test procedure NOPR, and analyzed and considered standards for rotary and reciprocating compressors. Although DOE considered reciprocating compressors within its scope of analysis, based on the results of DOE's analyses, DOE does not propose to establish standards for reciprocating compressors in this document. Consequently, in this NOPR, DOE proposes to establish energy conversation standards for only rotary compressors. Section V of this document provides further details on this decision. DOE notes that it may explore in the future whether standards for reciprocating or dynamic compressors are warranted.

4. Driver Type

Compressors can be powered using several types of drivers, commonly including electric motors and internal combustion engines. Electric motor-driven equipment may use either single-phase or three-phase electric motors. Combustion engine-driven air compressors can be powered by using different kinds of fuels, commonly including diesel, gasoline, and natural gas. In the Framework Document, DOE considered establishing standards for compressors regardless of driver type and requested stakeholder comments.

a. Combustion Engines

DOE received varying comments regarding the inclusion of combustion engine[23] driven compressors. Jenny, the Association of Equipment Manufacturers (AEM), and Sullair recommended excluding engine-driven compressors due to the burden imposed by current emissions regulations and overall low energy consumption by these products. (Jenny, No. 0005 at p. 2; AEM, No. 0011 at p. 1–2; Sullair, No. 0013 at p. 2) EEI and the CAIOU urged DOE to include engine-driven compressors to avoid creating a market trend towards engine-driven compressors. (EEI, No. 0012 at p. 2–3; CAIOU, No. 0018 at p. 2) The Joint Commenters recommended that DOE examine engine-driven compressors to evaluate possible energy savings but noted that generally they are used in low-duty cycle applications. (Joint Comment, No. 0016 at p. 2)

Engine-driven air compressors are generally portable and designed to be used in environments where access to electricity is limited or non-existent, particularly at the current or voltage levels required by comparable electric motor-driven compressors. Engine-driven compressors are also typically used as on-demand units, with a low duty cycle and annual energy consumption. Additionally, engine-driven compressors, by nature of their portability, are less able to be optimized for a specific set of operating conditions, which may harm efficiency relative to a stationary unit that is designed or selected with a specific load profile in mind. Consequently, engine-driven and electric motor-driven compressors do not serve the same applications and are not mutual substitutes.

DOE is aware that engine-driven compressors are currently covered by the Environmental Protection Agency's Tier 4 emissions regulations (40 CFR 1039).[24] DOE understands that these Tier 4 regulations have resulted in market-wide redesigns for the engines typically used in these compressors, which has required compressor manufacturers to redesign some of their own equipment. Based on the relatively lower annual energy consumption, non-overlapping applications of motor- and engine-driven equipment, and potentially competing priorities between current emissions regulations and potential energy conservation standards, DOE proposes to align with the scope of applicability of the test procedure NOPR and not include engine-driven equipment in the scope of this energy conservation standards this rulemaking. DOE may explore in the future whether standards for engine-driven units are warranted.

b. Motor Phase Count

In the Framework Document, DOE also considered excluding single-phase electric motor-driven equipment. Stakeholders generally agreed with excluding these products. (Saylor-Beall, No. 0003 at p. 2; CAGI, No. 0009 at p. 3; Joint Comment, No. 0016 at p. 2). Other stakeholders commented that compressors under 10-hp are generally packaged with single-phase electric motors. (CAGI, No. 0009 at p. 3; Jenny, No. 0005 at p. 2). Saylor-Beall commented that, particularly for compressors under 5-hp, three-phase shipment volumes are low. (Saylor-Beall, No. 0003 at p. 2) The Lot 31 Study estimated that single-phase compressors in the EU represent less than one percent of total compressor annual energy consumption. DOE research suggests that the U.S. compressors market exhibits similar trends.

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[23] For the purposes of this document, the term "engine" means "combustion engine," equipment which can convert chemical energy into mechanical energy by combusting fuel in the presence of air.

[24] See also: *http://www.epa.gov/otaq/nonroad-diesel.htm.*

However, DOE is aware that some reciprocating compressors can be packaged with either single- or three-phase electric motors. Establishing energy conservation standards for only one variation of a shared platform (*e.g.*, three-phase motor-driven reciprocating compressors) could create a market shift towards less efficient single-phase motor-driven reciprocating compressors. Consequently, in this document, DOE analyzed energy conservations standards for both single-phase and three-phase reciprocating compressors. Ultimately, based on the results of its analyses, DOE does not propose to establish standards for either single- or three-phase motor-driven reciprocating compressors in this document.

For rotary compressors, DOE understands that a very small fraction of the market may be shipped as single-phase. DOE currently has no data on the performance of single-phase rotary equipment. If the applicable single-phase motors are less efficient than their three-phase counterparts, it is possible that single-phase compressor packages may be less efficient as well.

In the absence of more information on the relative cost and efficiency of single- and three-phase compressors, DOE wishes to avoid the risk of a substitution incentive. As a result, DOE proposes, in this document, to consider standards for single-phase and three-phase rotary compressors in this rulemaking.

DOE requests comment on its proposal to consider standards for both single- and three-phase compressor equipment. DOE also requests comment on any market trends that may affect the efficiency of such equipment in the future. DOE requests data that may aid in characterizing the relative cost and performance of equipment of different motor phase counts, so that DOE can better evaluate whether a substitution incentive is likely to be created. This is identified as Issue 4 in section VIII.E, "Issues on Which DOE Seeks Comment."

c. Styles of Electric Motor

DOE is aware that some small compressors intended for very low duty-cycles may be manufactured with motors which use sliding electric contacts, or "brushes." Although brushes are simple to control and inexpensive to construct, they are rarely used in applications with significant operating hours, for several reasons. First, brushes generally impose a reduction in efficiency, relative to brushless technology, and are thereby suitable only for applications with low duty cycles. Second, brushes wear and require replacement at regular intervals, which may pose risk of inducing costly downtime in an industrial process. Third, brushes may create electrical arcing, rendering them unsuitable for certain industrial environments where combustible or explosive gases or dust may exist. Finally, brushes may create greater acoustic noise than brushless technology, which can be viewed as a form of utility to the end user.

All of these factors limit the applications for which any compressors distributed in commerce with brushed motors are suitable. However, DOE recognizes the applications for which brushed motors are appropriate as a unique market segment serving specific applications where, in particular, operating life and durability are not important criteria.

DOE also notes that compressors sold with brushed motors play a niche role in the market and, as a result, DOE does is electing to focus on the dominant brushless motor technology in developing the energy conservation standards proposed herein. Consequently, DOE proposes to align with the scope of applicability of the test procedure NOPR, and limit the scope of energy conservation standards to only those compressors that are driven by brushless motors.[25] DOE may consider energy conservation standards for compressors sold with brushed electric motors as part of a separate, future, rulemaking, if it determines such actions are warranted.

5. Equipment Capacity

Compressors are sold in a very wide range of capacities. Compressor capacity refers to the overall rate at which a compressor can perform work. Although the ultimate end-user requirement is a specific output volume flow rate of air at a certain pressure, industry typically describes compressor capacity in terms of the "nominal" horsepower of the motor. As a result, in the test procedure NOPR, DOE proposed to consider equipment capacity in terms of the "nominal" horsepower of the motor with which the compressor is distributed in commerce.

However, DOE recognizes that although the term nominal motor horsepower is commonly used within the compressor industry, it is not explicitly defined in ISO 1217:2009. To alleviate any ambiguity associated with these terms, DOE proposed in the test procedure NOPR to define the term "compressor motor nominal horsepower" to mean the motor horsepower of the electric motor, as determined in accordance with the applicable procedures in subpart B and subpart X of 10 CFR 431, with which the rated compressor is distributed in commerce.

In the Framework Document, DOE discussed limiting the scope of applicability based on equipment capacity as measured in horsepower (hp) to units with capacities of between 1 to 500 hp in order to align the scope of compressor standards with the scope of DOE's electric motors standards. *See* 10 CFR 431.25. Commenters generally recommended expanding the scope to cover compressors larger than 500 hp, in order to capture the maximum possible energy savings. (EEI, No. 0012 at p. 3; Joint Comment, No. 0016 at p. 2; Natural Resource Defense Council (NRDC), No. 0019 at p. 1; CA IOUs, No. 0018 at p. 2) Jenny and the Joint Commenters also recommended that the lower hp limit should be increased due to the low annual energy usage of compressors under 10 hp. (Jenny, No. 0005 at p. 3; Joint Comment, No. 0016 at p. 2)

DOE considered the comments of interested parties regarding the range of equipment capacities. Shipment data, broken down by rated capacity and compression principle (*i.e.*, rotary, reciprocating, and dynamic) indicate that units above 400 hp represent less than 1 percent of the rotary market and virtually none of the reciprocating market. Although it is possible to build positive displacement compressors above 500 hp, shipments are very low and the equipment is typically custom-ordered. DOE notes that, above 500 hp, dynamic compressors are the dominant choice for industrial compressed air service. Furthermore, as discussed in section III.B.3, little performance data is available on units with capacities greater than 500 hp. Due to this lack of data and the small market share for positive displacement compressors with capacities greater than 500 hp, DOE proposes to align with the scope of applicability of the test procedure NOPR and limit the scope of this energy conservation rulemaking to compressors with a compressor motor nominal horsepower of greater than or equal to 1 and less than or equal to 500 hp. Based on available shipment data,

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[25] In the test procedure NOPR, DOE proposed to define "brushless electric motor" as a machine that coverts electrical power into rotational mechanical power without use of sliding electrical contacts." DOE considers "brushless" motors to include, but not be limited to, what are commonly known as "induction," "brushless DC," "permanent magnet," "electrically commutated," and "reluctance" motors. The term "brushless" motors would not include what are commonly known as "brushed DC" and "universal" motors.

DOE's proposal is expected to cover nearly the entirety of the rotary and reciprocating compressor market.

DOE requests comment on the proposal to include only compressors with a compressor motor nominal horsepower of greater than or equal to 1 and less than or equal to 500 within the scope of this energy conservation standard. This is identified as Issue 5 in section VIII.E, "Issues on Which DOE Seeks Comment."

6. Full-Load Operating Pressure

Because different compressed air applications require air to be delivered at specific pressure ranges, output pressure is a critical characteristic in equipment selection and compressed air system design. DOE notes that there may be several ways to characterize output pressure. In the test procedure NOPR, DOE proposed to use "full-load operating pressure" as the most relevant metric, where "full-load operating pressure" is a declared pressure, which must be greater than or equal to 90 percent and less than or equal to 100 percent of the maximum full-flow operating pressure.

The test procedure NOPR also proposed a definition and test method for finding "maximum full-flow operating pressure," which is a term needed to characterize "full-load operating pressure." DOE proposed that "maximum full-flow operating pressure" means the maximum discharge pressure at which the compressor is capable of operating.

Industry convention holds that when output pressure is cited absolutely or in "gauge" (*i.e.*, not as a ratio), the input pressure is assumed to be that at which a compressor would ingest ambient air at sea level.[26] "Gauge" pressure, whether given in U.S. or metric units, normally means "the amount above intake pressure." A compressor described as delivering 100 psig,[27] then, can be assumed to produce 114.7 psi in absolute terms when operated in a standard atmosphere. Gauge pressure is commonly used because for most purposes, the pressure differential is more critical to the application than the absolute measurement. Another commonly-used pressure descriptor is "pressure ratio." Simply, it is the ratio of the absolute output (discharge) and absolute input (suction) pressures. For compressors operating in the same conditions, this value expresses identical information.

In response to discussions of operating pressure in the Framework Document, CAGI provided the following detailed breakdown of output pressures in the rotary compressors market. (CAGI, No. 0030 at p. 4):

- Approximately 4.4 to 30 pounds per square inch gauge (psig) (pressure ratio greater than 1.3 and less than or equal to 3.0): The compressors industry generally refers to these products as blowers—a term DOE is considering defining as part of its fans and blowers rulemaking (Docket No. EERE–2013–BT–STD–0006). The majority of these units are typically distributed in commerce as bare compressors and do not include a driver, mechanical equipment, or controls.
- 31 to 79 psig (pressure ratio greater than 3.1 and less than or equal to 6.4): There are relatively few compressed air applications in this pressure range, contributing to both low product shipment volume and low annual energy consumption.
- 80 to 139 psig (pressure ratio greater than 6.4 and less than or equal to 10.5): This range represents the majority of general compressed air applications, shipments, and annual energy use.
- 140 to 215 psig (pressure ratio greater than 10.5 and less than or equal to 15.6): This range represents certain specialized applications, relatively lower sales volumes and annual energy consumption when compared to the 80 to 139 psig rotary compressor segment.
- Greater than 215 psig (pressure ratio greater than 15.6): This range represents even more specialized applications, which require highly engineered rotary compressors that vary based on each application.

DOE did not receive any additional information that separated the market of reciprocating compressors by pressure. According to the Lot 31 preparatory study final report,[28] single- and two-stage reciprocating compressors typically operate from 0.8 to 12 bar (12 to 174 psig; pressure ratio 1.8 to 13), and multi-stage reciprocating compressors typically operate from 12 to 700 bar (174 to 10,152 psig; pressure ratio 13 to 701). However, based on market research and discussions with various compressor manufacturers, DOE believes that pressure ranges for reciprocating compressors are similar to rotary compressors.

In the test procedure NOPR, DOE proposed defining a "compressor" as equipment with a pressure ratio exceeding 1.3. Furthermore, in the test procedure NOPR, DOE proposed that the test procedure only be applicable to compressors with full-load operating pressures greater than or equal to 31 psig and less than or equal to 225 psig. In this document, DOE proposes to align with the scope of applicability of the test procedure NOPR, and limit the scope of energy conversation standards to compressors with full-load operating pressures of between 31 and 225 psig (pressure ratios greater than ~3.1 and less than or equal to 16.3). DOE notes that while some commenters suggested an upper limit of 215 psig, full-load operating pressure values may be generated differently by each manufacturer and it is not clear that they are completely comparable between manufacturers.[29] For example, a product listed at 215 psig from one manufacturer may compete with a product listed at 217 psig from another, which may compete with one listed at 212 psig from a third. Although DOE's proposed test procedure seeks to eliminate this issue, DOE must still account for the current lack of consistent pressure rating methodology in the compressor industry. As a result, DOE proposes to adopt an upper limit of 225 psig to include the majority of non-special purpose equipment DOE could identify on the market. Compressor equipment with full-load operating pressures below 31 psig and above 225 psig generally represent a different equipment type and serve applications that do not often overlap with the 31–225 psig compressor market, and do not represent a significant volume of sales.

C. Test Procedure

DOE is currently conducting a rulemaking to establish a uniform test procedure for determining the energy efficiency of compressors. DOE proposed a test method for calculating the package isentropic efficiency of compressors, by measuring the delivered power (in the form of compressed air) and the electric input power to the motor or controls. DOE proposed that the methods be based on International Organization for Standardization (ISO) Standard 1217:2009, "Displacement compressors—Acceptance tests," (hereinafter referred to as "ISO 1217:2009") with modifications. In response to the Framework, Jenny recommended that compressors not be separated based on rated horsepower, as they do not always run at full horsepower. (Jenny, No. 0005 at p. 2) The Joint Commenters recommended that a metric using both package specific power[30] and package isentropic efficiency be used to provide useful information for consumers. (Joint Comment, No. 0016 at p. 3)

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[26] Commonly approximated in pounds per square inch (psi) as 14.7.

[27] *i.e.*, psi in gauge terms.

[28] The European Union regulatory body is also exploring standards for compressors, which is part of a product group which it refers to as "Lot 31." For copies of the EU Lot 31 Final Report of a study on Compressors please go to: *www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0040-0031*. For copies of the EU Lot 31 draft regulation: *www.regulations.gov/contentStreamer?documentId=EERE-2013-BT-STD-0040-0031&disposition=attachment&contentType=pdf*.

[29] DOE notes that there is no universally accepted procedure for establishing full-load operating pressure and, thus, no assurances that values are comparable.

In the test procedure NOPR, DOE proposed that the energy conservation standards for compressors be expressed in terms of fixed-speed package isentropic efficiency ($\eta_{isen,FS}$) for fixed-speed compressors and variable-speed package isentropic efficiency ($\eta_{isen,VS}$) for variable-speed compressors. The terms $\eta_{isen,FS}$ and $\eta_{isen,VS}$ describe the power required for an ideal isentropic compression process, divided by the actual input power of the packaged compressor. The $\eta_{isen,FS}$ considers this ratio at full-load operating pressure and $\eta_{isen,VS}$ considers this ratio at a weighted-average of full-load and part-load operating pressures. The metrics are defined in Equations 1 and 2 as follows:

$$\eta_{isen,FS} = \frac{P_{isen,FL}}{P_{real,FL}} \qquad \textbf{Equation 1}$$

Where:

- $\eta_{isen,FS}$ is the package isentropic efficiency at full-load operating pressure;
- $P_{isen,FL}$ is the isentropic power required for compression at full-load operating pressure, as determined in accordance with the DOE test procedure. This metric applies only to fixed-speed compressors, and;
- $P_{real,FL}$ is the packaged compressor power input at full-load operating pressure, as tested in accordance with the DOE test procedure. This metric applies only to fixed-speed compressors.

$$\eta_{isen,VS} = \sum_{i=40\%,70\%,100\%} \omega_i \frac{P_{isen,i}}{P_{real,i}} \qquad \textbf{Equation 2}$$

Where:

- $\eta_{isen,VS}$ is the package isentropic efficiency as applied to variable-speed compressors;
- $P_{isen,i}$ is the isentropic power required for compression at rating point i, as determined in accordance with the DOE test procedure. This metric applies only to variable-speed compressors;
- $P_{real,i}$ is the packaged compressor power input at rating point i, as tested in accordance with the DOE test procedure. This metric applies only to variable-speed compressors;
- ω_i is the weighting at each rating point, as described in the DOE test procedure; and
- i are the load points corresponding to 40-, 470-, and 100-percent of the full-load actual volume flow rate.

The measured value of package isentropic efficiency would then be compared to DOE's proposed energy conservation standard. A value greater than the proposed standard indicates that the compressor exceeds the minimum efficiency standard, while a value lower than the proposed standard indicates that the compressor fails to meet the proposed standard.

D. Technological Feasibility

1. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially-available products or in working prototypes to be technologically feasible. See, *e.g.*, 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i).

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; and (3) adverse impacts on health or safety. See, *e.g.*, 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(ii)–(iv). Additionally, DOE generally does not include in its analysis any proprietary technology that is a unique pathway to achieving a certain efficiency level. Section IV.B of this document discusses the results of the screening analysis for compressors, particularly with respect to the designs DOE considered, those it screened out, and those serving as the basis for the proposed standards being considered. For further details on the screening analysis for this rulemaking, see chapter 4 of the NOPR technical support document (TSD).

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt a new standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(p)(1) and 6316(a)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible ("max-tech") improvements in energy efficiency for compressors, using the design parameters for the most efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this rulemaking are described in section IV.C of this proposed rule and in chapter 5 of the NOPR TSD.

E. Compliance Date

DOE estimates that any final rule would publish in late 2016. Therefore, DOE has used an estimated compliance date for this rulemaking in late 2021.[31]

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[30] In the test procedure NOPR, DOE proposes to define the term "package specific power" as "the compressor power input at a given load point, divided by the actual volume flow rate at the same load point, as determined in accordance with the test procedures prescribed in § 431.344."

[31] DOE's analysis begins in the first full year of compliance with new standards, 2022.

F. Energy Savings

1. Determination of Savings

For each trial standard level (TSL), DOE projected energy savings from applying the TSL to compressors purchased in the 30-year period that begins in the first full-year of compliance with the proposed standards (2022–2051).[32] The savings are measured over the entire lifetime of compressors purchased during this 30-year period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely evolve in the absence of new energy conservation standards.

DOE used its national impact analysis (NIA) spreadsheet model to estimate national energy savings (NES) from potential for compressors. The NIA spreadsheet model (described in section IV.H of this document) calculates energy savings in terms of site energy, which is the energy directly consumed by products at the locations where they are used. Based on the site energy, DOE calculates NES)in terms of primary energy savings at the site or at power plants, and also in terms of full-fuel-cycle (FFC) energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy conservation standards.[33] DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information on FFC energy savings, see section IV.H.1 of this document.

2. Significance of Savings

To adopt any new or amended standards for a covered product, DOE must determine that such action would result in "significant" energy savings. (42 U.S.C. 6295(o)(3)(B) and 6316(a)) Although the term "significant" is not defined in the Act, the U.S. Court of Appeals for the District of Columbia Circuit, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), opined that Congress intended "significant" energy savings in the context of EPCA to be savings that were not "genuinely trivial." The energy savings for all of the TSLs considered in this rulemaking, including the proposed standards (presented in section V), are nontrivial, and, therefore, DOE considers them "significant" within the meaning of section 325 of EPCA.

G. Economic Justification

1. Specific Criteria

As noted in this preamble, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII) and 6316(a)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

DOE considers the economic impacts of its potential standards on both manufacturers and consumers. See 42 U.S.C. 6295(o)(2)(B)(i)(I) and 6316(a). In determining the impacts of a potential amended standard on manufacturers, DOE conducts a manufacturer impact analysis (MIA), as discussed in section IV.J. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include: (1) Industry net present value (INPV), which values the industry on the basis of expected future cash flows; (2) cash flows by year; (3) changes in revenue and income; and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and payback period (PBP) associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the consumer costs and benefits expected to result from particular standards. DOE also evaluates the impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a standard.

b. Savings in Operating Costs Compared to Increase in Price (LCC and PBP)

DOE considers the savings in operating costs throughout the estimated average life of the covered equipment in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses of that equipment that are likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II) and 6316(a)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a product (including its installation) and the operating expense (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and discount rates appropriate for consumers. To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more stringent standard by the change in annual operating cost for the year that standards are assumed to take effect.

For its LCC and PBP analysis, DOE assumes that consumers will purchase the covered products in the first year of compliance with amended standards. The LCC savings for the considered efficiency levels are calculated relative to the case that reflects projected market trends in the absence of amended standards. DOE's LCC and PBP analysis is discussed in further detail in section IV.F.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires

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[32] Each TSL is comprised of specific efficiency levels for each product class. The TSLs considered for this NOPR are described in section V.A. DOE conducted a sensitivity analysis that considers impacts for products shipped in a 9-year period.

[33] The FFC metric is discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (Aug. 18, 2011), as amended at 77 FR 49701 (Aug. 17, 2012).

DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III) and 6316(a)) As discussed in section III.D, DOE uses the NIA spreadsheet models to project national energy savings.

d. Lessening of Utility or Performance of Equipment

In establishing equipment classes and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen equipment utility or performance. (42 U.S.C. 6295(o)(2)(B)(i)(IV) and 42 U.S.C. 6316) Based on data available to DOE, the standards proposed in this document would not reduce the utility or performance of the products under consideration in this rulemaking.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, which is likely to result from a proposed standard. (42 U.S.C. 6295(o)(2)(B)(i)(V) and 6316(a)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii) and 6316(a)) DOE will transmit a copy of this proposed rule to the Attorney General with a request that the Department of Justice (DOJ) provide its determination on this issue. DOE will include the Attorney General's response in the docket for this rulemaking and will respond to the Attorney General's determination in the final rule.

f. Need for National Energy Conservation

DOE also considers the need for national energy conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VI) and 6316(a)) The energy savings from the proposed standards are likely to provide improvements to the security and reliability of the nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the nation's needed power generation capacity, as discussed in section IV.M.

The proposed standards also are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production and use. DOE conducts an emissions analysis to estimate how potential standards may affect these emissions, as discussed in section IV.K; the emissions impacts are reported in section V.L of this document. DOE also estimates the economic value of emissions reductions resulting from the considered TSLs, as discussed in section IV.L.

g. Other Factors

In determining whether an energy conservation standard is economically justified, DOE may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII) and 6316(a)) To the extent there are other factors relevant to evaluating whether the proposed standards are economically justified, DOE may consider other factors that fall outside of the categories discussed above.

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii) and 6316(a), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effects that proposed energy conservation standards would have on the payback period for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the nation, and the environment. See 42 U.S.C. 6295(o)(2)(B)(i) and 6316(a). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section V.B.1.c of this proposed rule.

H. Compressor Industry Recommendation

DOE received a comment on proposed standards and test methods from CAGI, the primary compressor trade association. That recommendation is summarized below.[34] DOE responds to the points made within the comment in the appropriate sections of this document.

1. Summary

CAGI recommended making mandatory the use of standardized test methods and reporting formats that are presently voluntary. With respect to scope, CAGI suggested that DOE address lubricated, rotary compressors operating from 80–139 psig and with "flows" from 35 to 2000 cfm. (CAGI, No. 0030 at p. 1) The benefits, according to CAGI, include energy savings, regulatory simplicity, and granting industry the ability to continue energy efficiency efforts undisrupted. *Id.*

2. Specific Provisions

CAGI makes the following comments and recommendations in its submission:

- With respect to European efforts, that the Lot 31 Study made use of CAGI-published data, and that those efforts can inform the work being done by DOE. (CAGI, No. 0030 at p. 3)
- The biggest part of the compressed air industry serves "general industrial air" customers which primarily use rotary equipment, rated from 80–139 psig and 35–2000 cfm, and driven by electric motors rated from 10 to 500-hp. (CAGI, No. 0030 at p. 3)
- There is little risk of substitution for compressors if DOE opts to leave certain market segments unregulated. Customer needs generally define which equipment is purchased. (CAGI, No. 0030 at p. 4)
- Lubricant-free[35] equipment is used in more specialized applications and carries significantly smaller market size. As a result, regulation carries smaller potential to save energy and greater risk of negative impact to manufacturers and consumers. (CAGI, No. 0030 at p. 5) DOE, like EU Lot 31, should not include lubricant-free equipment.
- Reciprocating compressors should not be included in the rulemaking. Low duty cycle and small average capacity means that energy savings potential is

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[34] Available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0040-0030.*

[35] Although industry frequently uses the term "oil-free" to describe equipment with substances injected during the compression process, not all of the substances used are oils, in the chemical sense, and so DOE will use the term "lubricant-free" to refer to such equipment.

significantly lower than for other compressor types. The market is highly fragmented, with many assemblers purchasing parts from a variety of suppliers. Finally, low production volumes could generate large negative impacts to manufacturers forced to redesign in order to comply with a standard. (CAGI, No. 0030 at p. 6)

- CAGI supplies proposed definitions for "basic package compressor," "standard air compressor," and "rotary standard air compressor." (CAGI, No. 0030 at p. 8)
- With respect to measurement, CAGI proposes use of ISO 1217:2009 for both fixed- (Annex C) and variable-speed (Annex E) equipment. For variable-speed equipment, CAGI proposes a weighted average performance across certain load points, also proposed for use by EU Lot 31. (CAGI, No. 0030 at p. 8–9)
- In CAGI's view, standardizing measurement and data publication will be sufficient to drive continued energy conservation in compressors. CAGI asserts that the market already self-establishes a de facto minimum performance standard, and attempts by DOE to introduce one may be counterproductive to both energy savings and manufacturer welfare. (CAGI, No. 0030 at p. 9)

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed in this rulemaking for compressors. Separate subsections address each component of DOE's analyses.

DOE used several analytical tools to estimate the impact of the standards proposed in this document. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential amended or new energy conservation standards. The national impacts analysis uses a second spreadsheet set that provides shipments forecasts and calculates national energy savings and net present value of total end user costs and savings expected to result from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (GRIM), to assess manufacturer impacts of potential standards. These spreadsheet tools are available at *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/78*. Additionally, DOE used output from the latest version of EIA's *Annual Energy Outlook* (*AEO*), a widely known energy forecast for the United States, for the emissions and utility impact analyses.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the equipment concerned, including the purpose of the equipment, the industry structure, manufacturers, market characteristics, and technologies used in the equipment. This activity includes both quantitative and qualitative assessments, based primarily on publicly-available information (*e.g.*, manufacturer specification sheets, and industry publications) and data submitted by manufacturers, trade associations, and other stakeholders. The subjects addressed in the market and technology assessment for this rulemaking include: (1) A determination of the scope of the rulemaking and equipment classes; (2) manufacturers and industry structure; (3) existing efficiency programs; (4) shipments information; (5) market and industry trends; and (6) technologies or design options that could improve the energy efficiency of compressors. The key findings of DOE's market assessment are summarized below. See chapter 3 of the NOPR TSD for further discussion of the market and technology assessment.

1. Equipment Classes

When evaluating and establishing energy conservation standards, DOE divides covered products into equipment classes by the type of energy used or by capacity or other performance-related features that justify differing standards. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (42 U.S.C. 6295(q) and 6316(a)) DOE proposes dividing compressors based on the following factors, which are discussed in sections IV.A.1.a through IV.A.1.e:

- Compression principle,
- Lubricant presence,
- Cooling method,
- Motor speed type, and
- Motor phase count.

In the Framework Document, DOE requested stakeholder comment regarding whether and how compressors should be divided into separate classes. Stakeholder comments regarding equipment classes, the specific separation of equipment classes based on the listed factors, and the final list of proposed equipment classes are discussed further in the following sections. Generally, the notion of establishing separate equipment classes was supported by commenters.

a. Compression Principle

In response to the Framework Document, Saylor-Beall and Jenny compressors commented that rotary compressors are generally high-duty cycle equipment, while reciprocating compressors are generally low-duty cycle equipment. (Saylor-Beall, No. 0003 at p. 3; Jenny, No. 0005 at p. 4) As noted in section III.A, DOE considered standards for both reciprocating and rotary compressors as part of this rulemaking. DOE also proposes to divide these two compressor types into separate equipment classes. Rotary and reciprocating compressors have significantly different operating characteristics; as a result these equipment types are used in different applications and have different levels of attainable efficiency. Both rotary and reciprocating are considered to be positive displacement compressors, which act by compressing successive trapped volumes of air.

Reciprocating compressors compress air using the repeated linear motion of a moving member (*e.g.*, a piston) within a sealed compression chamber. Reciprocating compressors do not require a warm up period and can be operated using an on/off control scheme, making them best suited for intermittent and low duty cycle applications. This is because low cycles require frequent starting and stopping. Equipment which required warming up to operate properly would operate inefficiently, wear prematurely, or both. Reciprocating compressors use actuated valves to seal the compression chamber, which holds air leakage (a form of energy loss) to modest levels even when operating cold. Rotary compressors, by contrast, do not use valves but rely on carefully designed and manufactured rotor clearances, which are efficient after the rotor has heated and expanded to design specifications, in order to limit air leakage. Customers with low duty cycles may find additional utility, therefore, in reciprocating compressors. By contrast, reciprocating compressors, by nature of their reciprocating motion, produce more vibration and, therefore, may wear more quickly and, therefore, may offer reduced utility to customers with higher duty cycles and high cost of downtime.

Rotary compressors compress air progressively as it moves from the inlet point to the discharge point using the cyclical motion of one or several rotors. Rotary compressors may require a warm-up period to operate properly, and are therefore better suited for high duty cycle applications, in which equipment is less frequently cycled on and off and, therefore, in which design operating temperatures may be maintained. Rotary compressors typically cannot be operated using an on/off control scheme; rather, they may be controlled by other methods such as load/unload, inlet flow modulation, and variable displacement drives. As mentioned in the previous paragraph, rotary compressors rely on reaching a certain operating temperature, or "warming up," to allow mechanical parts to expand to reach the proper design clearances. Operating a rotary compressor in a low-duty, on/off manner, may cause the compressor to operate inefficiently, wear prematurely, or both. These control methods are discussed further in chapter 3 of the NOPR TSD.

Although reciprocating compressors typically have lower isentropic efficiencies than rotary compressors, reciprocating compressors excel in low duty cycle or intermittent applications and may consume less overall energy than a rotary compressor when deployed in such settings. Alternatively, to provide air for intermittent loads, a rotary compressor would be required to remain running in a modulated or unloaded condition, even at times of low or zero load. This is inherent in the scheme; a technology which cannot start and stop (either literally or because doing so would cause adverse consequences such as premature wear) must employ other capacity-reducing measures such as modulation or unloading to match supply to demand. Consequently, DOE concludes that dividing rotary and reciprocating compressors into separate equipment classes on the basis of suitability for different duty cycles is appropriate.

DOE requests comment on its proposal to establish separate equipment classes for rotary and reciprocating equipment, and on whether and why utility or performance differences exist between the two types of equipment. This is identified as Issue 6 in section VIII.E, "Issues on Which DOE Seeks Comment."

b. Lubricant Presence

In response to the Framework Document, Atlas Copco commented that compressors can be divided into two separate groups, lubricated and lubricant-free.[36] (Atlas-Copco, No. 0008 at p. 3) DOE proposes to divide lubricated and lubricant-free into separate equipment classes. Compressors are manufactured in both lubricated and lubricant-free configurations. For the purposes of this rulemaking, DOE is proposing to define these lubrication types as follows:

"Lubricated compressor" means a compressor that introduces an auxiliary substance into the compression chamber during compression.

"Lubricant-free compressor" means a compressor that does not introduce any auxiliary substance into the compression chamber at any time during operation.

For the purposes of this rulemaking, DOE proposes to define "auxiliary substance" as follows:

"Auxiliary substance" means any substance deliberately introduced into a compression process to aid in compression of a gas by any of the following: Lubricating, sealing mechanical clearances, or absorbing heat.

DOE notes that lubricant-free compressors may still use lubricant within other portions of the compressor, as long as the lubricant does not enter the compression chamber at any point during operation. DOE also notes that, under the proposed definitions, compressors would be considered "lubricated" if an auxiliary substance of any sort were introduced into the compression chamber. This would include oil, and water, which is not typically described as a lubricant within the compressor industry.

DOE's analysis and research found that lubricated compressors are generally more efficient than lubricant-free compressors. In lubricated compressors, the lubricant is injected into the compression chamber to serve two primary purposes:

1. Sealing the compression chamber mechanical clearances and reduce air leakage by using the surface tension of the liquid to form a barrier to air escape, and

2. Cooling the compressed air during compression, increasing efficiency by bringing the compression process closer to a thermodynamic ideal.

Due to their inherently lower efficiencies and comparatively higher costs, lubricant-free compressors do not compete directly with lubricated compressors for general-purpose compressed air applications. However, certain applications with specific air purity requirements cannot use lubricated compressors due to the presence of residual lubricant that cannot be effectively removed from the output air using filtration. Examples of these applications include food processing equipment, clean-room manufacturing, and air for medical uses. Lubricant-free compressors are necessary to meet the air purity requirements of these applications. By contrast, a lubricant-free compressor could likely be used with no loss of utility in applications traditionally served by lubricated compressors. Because of their higher cost, however, they are typically deployed only when called for by customer utility requirements.

Lacking lubricant to aid in sealing clearances, lubricant-free compressors are usually manufactured with smaller clearances. Although this practice adds cost, it reduces some of the air leakage that result from a lack of lubrication. However, reducing clearances too far may result in increased friction and maintenance requirements. This limits how tight the clearances of lubricant-free compressors can be. As such, lubricant-free compressors still allow more leakage relative to lubricated compressors. This leakage reduces efficiency, because as the air is lost, so is the energy that was used to treat it. Further, lubricant-free compressors may require larger after-coolers than lubricated compressors. An after-cooler is used to cool the compressed air after compression and prior to discharge. The after-cooler causes package pressure losses and decreases in efficiency.

DOE notes that an ISO standard, 8573–1:2010,[37] exists and is used by industry to measure and describe the purity of air. Air is described as being "class zero" if it is determined to meet the most stringent air purity levels recognized by this standard. DOE is aware that some compressors that meet the proposed definition of lubricated in this document may also be able to meet the class zero standard of ISO 8573–1:2010. For example, the compressor may include an advanced lubricant filtration system to bring lubricant concentration below a certain threshold. Alternatively, the compressor may inject only water into the chamber, which may be removed with ordinary cooling and drying equipment.

DOE requests comment on separating equipment classes by lubricant presence, and specifically on whether ISO 8573–1:2010 is suitable for characterizing compressors on that basis. DOE also requests comments on the proposed definitions for lubricated compressor, lubricant-free compressors, and auxiliary substance. This is identified as Issue 7 in section VIII.E, "Issues on Which DOE Seeks Comment."

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[36] Although industry frequently uses the term "oil-free" to describe equipment with substances injected during the compression process, not all of the substances used are oils, in the chemical sense, and so DOE will use the term "lubricant-free" to refer to such equipment.

[37] See: *http://www.iso.org/iso/catalogue_detail.htm?csnumber=46418*

c. Cooling Method

DOE proposes to divide air-cooled and water-cooled rotary compressors into separate equipment classes. Due to considerable heat created during compression, compressors are normally packaged with cooling systems for both the air itself, and, if applicable, the lubricant. The cooling system may utilize either air or water to remove heat from the system. For the purposes of this rulemaking, DOE proposes to define the two cooling methods as follows:

"Air-cooled compressor" means a compressor that utilizes air to cool both the compressed air and, if present, any auxiliary substance used to facilitate compression.

"Water-cooled compressor" means a compressor that utilizes chilled water provided by an external system to cool both the compressed air and, if present, any auxiliary substance used to facilitate compression.

DOE's research and analysis of industry data indicates that water-cooled compressors are typically more efficient than air-cooled compressors, as measured by ISO 1217:2009.

Air-cooled compressors circulate ambient air through the heat exchangers to cool both the compressed air and lubricant. Air-cooled compressors usually require fans to circulate air through the heat exchangers; these fans increase the total package energy consumption, thus decreasing the total package efficiency.

Water-cooled compressors circulate chilled water from an external water supply through heat exchangers to cool both the compressed air and lubricant. The chilled water heat exchanger does not cause any additional energy consumption within the compressor package, as the cooling water is chilled and pumped from a remote location. However, water-cooled compressors can only be used in locations where chilled water is available, thus limiting the utility and applicability of water-cooled compressors. Conversely, air-cooled compressors require only air for cooling and can be used in locations where chilled water may not be available. Therefore, air-cooled compressors present a utility advantage to customers without access to a cooling water supply.

DOE notes that efficiency, as measured by the proposed test procedure NOPR, would reflect slightly different concepts for air- and water-cooled compressors. In both cases, a cooling medium is being actively circulated to remove heat from the unit and energy is being consumed to circulate the medium. But only in the case of air-cooled units is that energy consumption reflected in the efficiency metric. The consumption occurs remotely for water-cooled units. Without further analysis, it is difficult to assess which consumption may be greater overall. But this difference is what is measured by efficiency, in addition to the difference in end user utility already discussed, and offers a second justification for establishment of separate equipment classes.

DOE is not aware of any water-cooled reciprocating compressors currently available in the U.S. market. However, if such equipment does exist, or enters the market in the future, the data presented earlier in this section suggest that water-cooled compressors may be more efficient than similar air-cooled units. As a result, DOE proposes to consider both air- and water-cooled reciprocating compressors in a single equipment class and to base any energy conservation standards for both only on available air-cooled data. Based on comparison of air- and water-cooled rotary compressors, DOE concludes that it is technologically feasible for any water-cooled reciprocating compressor introduced to the market to meet an energy conservation standard set based on the current air-cooled reciprocating compressors market.

DOE requests comment on its proposal to establish separate equipment classes for air- and water-cooled equipment. DOE also requests comments on the proposed definitions for air- and water-cooled compressor. This is identified as Issue 8 in section VIII.E, "Issues on Which DOE Seeks Comment."

d. Motor Speed

DOE's research indicates that electric motor-driven compressors can be further separated by the style of electric driver used in the package. Specifically, DOE found that compressors are sold with either a variable-speed driver, which can operate across a continuous range of driver speeds, or a fixed-speed driver, which can operate at only a single fixed-speed. In the test procedure NOPR, DOE proposed definitions for "fixed-speed compressor" and "variable-speed compressor."

The term "fixed-speed compressor" means an air compressor that is not capable of adjusting the speed of the driver continuously over the driver operating speed range in response to incremental changes in the required compressor flow rate.

The term "variable-speed compressor" means an air compressor that is capable of adjusting the speed of the driver continuously over the driver operating speed range in response to incremental changes in the required compressor actual volume flow rate.

DOE found that variable-speed compressors are typically less efficient at full load than comparable fixed-speed compressors, partially due to efficiency losses within the variable-speed drive. Variable-speed compressors are typically intended for use in systems where air demand is expected to vary over the course of operation; this takes advantage of the unit's ability to operate more efficiently at part load. For this reason, variable-speed compressors are sometimes optimized for efficiency at part-load; this will typically result in full-load efficiencies lower than those of comparable fixed-speed units. Additionally, they may function as "trim" compressors in multi-unit installations. Trim compressors are normally the first ones to adjust their capacity output when overall system air demand changes. If the overall system air demand changes outside what the trim compressor is able to accommodate, additional compressors may be turned on and off according to which configuration would produce most efficient operation. By contrast, a "base load" compressor is expected to be operated either on or off a large fraction; this compressors is a poor candidate for variable-speed functionality, because of both the financial and full-load performance cost of adding that capability. Due to the difference in utility and attainable efficiency between fixed and variable-speed compressors, DOE proposes to separate these two compressor styles into separate equipment classes.

e. Motor Phase Count

DOE also proposes to divide single- and three-phase reciprocating compressors into separate equipment classes. Lower power reciprocating compressors, typically less than 10 hp, can be packaged with either single-phase or three-phase electric motors. Reciprocating compressors packaged with single-phase electric motors are typically less efficient than those packaged with three-phase electric motors due to the inherent lower efficiency of single-phase motors. Single-phase reciprocating compressors are generally used in applications with lower duty cycles and no access to three-phase power, such as tire inflation at a local service station, or oral surgery at a dental office. Three-phase reciprocating compressors typically see higher duty cycles and can only be used for applications in which three-phase power is available. An automotive body shop or very light industrial production may have such compressors, but they would likely not be found as the primary air source for a high-volume industrial production application. Few residential applications have access to three-phase power. As a result, DOE concludes that single- and three-phase compressors offer different end user utility. Consequently, DOE proposes to divide reciprocating compressors packaged with single-phase and three-phase electric motors into separate equipment classes.

By contrast, DOE was able to find little data on single-phase rotary compressors, which appear to form a very small fraction of the market. As a result, DOE was not able to determine whether such equipment was able to meet the same performance levels as three-phase equipment. To avoid the risk of in advertently incentivizing the market to shift to single-phase rotary equipment (if separated or not included), DOE proposes in this NOPR not to separate rotary equipment classes by motor phase count. As such, each rotary equipment class encompasses both single- and three-phase equipment.

Based on interviews with manufacturers, DOE is aware that single-phase rotary equipment may be gaining popularity in European markets. If such equipment is being chosen to conserve energy, and if the adoption of increased standards may hinder the adoption or development of single-phase rotary equipment to save energy, DOE may consider establishing a separate standard for single-phase rotary equipment in the final rule.

DOE requests comment on the establishment of separate equipment classes, by motor phase count, for reciprocating equipment. This is identified as Issue 9 in section VIII.E, "Issues on Which DOE Seeks Comment."

DOE also requests comment on the proposal to combine single- and three-phase rotary equipment in each rotary equipment class. This is identified as Issue 10 in section VIII.E, "Issues on Which DOE Seeks Comment."

f. List of Proposed Equipment Classes

DOE's list of proposed equipment classes is provided in Table IV.1:

TABLE IV.1—LIST OF DOE PROPOSED COMPRESSOR EQUIPMENT CLASSES

Compressor type	Lubrication type	Cooling method	Driver type	Motor phase	Equipment class designation
Rotary	Lubricated	Air-Cooled	Fixed-Speed	Any	RP_FS_L_AC
			Variable-speed		RP_VS_L_AC
		Water-Cooled	Fixed-Speed		RP_FS_L_WC
			Variable-speed		RP_VS_L_WC
	Lubricant-Free	Air-Cooled	Fixed-Speed		RP_FS_LF_AC
			Variable-speed		RP_VS_LF_AC
		Water-Cooled	Fixed-Speed		RP_FS_LF_WC
			Variable-speed		RP_VS_LF_WC
Reciprocating	Lubricated	Air-Cooled or Water-Cooled	Fixed-Speed	Three-Phase	R3_FS_L_XX
				Single-Phase	R1_FS_L_XX
	Lubricant-Free			Three-Phase	R3_FS_LF_XX
				Single-Phase	R1_FS_LF_XX

2. European Union Regulatory Action

The EU Ecodesign directive established a framework under which manufacturers of energy-using products are obliged to reduce the energy consumption and other negative environmental impacts occurring throughout the product life cycle.[38] Products are broken out in to different "Lots," with compressors studied in Lot 31. In June 2014, the EU completed and published its final technical and economic study of Lot 31 compressors.[39]

As part of its study, the EU examined the entire compressors market to determine an appropriate scope of coverage for its energy conservation standards. The results of this study led the Commission of the European Communities to establish a working document proposing possible energy efficiency requirements for compressors. The EU draft regulation[40] proposed to cover the following compressor types:

- Oil-lubricated Rotary Air Compressor Packages with:
  - Rated output flow rate of between 5 to 1,280 liters per second,[41]
  - Three-phase electric motors,
  - Fixed or variable-speed drives, and
  - Full-load operating pressure of between 7 to 14 bar gauge.
- Oil-lubricated Reciprocating Air Compressor Packages with:
  - Rated output flow rate of between 2 to 64 liters per second,
  - Three-phase electric motors,
  - Fixed-speed drives, and
  - Full-load operating pressure of between 7 to 14 bar gauge.

The Lot 31 study used data collected from CAGI Performance Verification Program data sheets to determine the market distribution of compressor efficiency for rotary compressors and data collected from a confidential survey conducted of European manufacturers for reciprocating compressors.

The EU draft regulation proposed to separate the covered products into the following three equipment classes and to set a different standard level, based on package isentropic efficiency, for each class:

- Fixed-speed Rotary Standard Air Compressors—Standard level set as package isentropic efficiency at full-load operating conditions;
- Variable-speed Rotary Standard Air Compressors—Standard level set as a weighted average of package isentropic efficiency at 100-percent, 70-percent, and 40-percent of full-load operating conditions; and
- Piston Standard Air Compressors—Standard level set as package isentropic efficiency at full-load operating conditions.

a. Specific Suggested Requirements

The EU draft proposal suggests compliance beginning in 2018, and are increased in 2020 for certain compressor types, as explain in Table IV.2 and Table IV.3:

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[38] Source: *www.eceee.org/ecodesign/products/Compressors.*

[39] For copies of the EU Lot 31 Final Report on Compressors, please go to: *www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0040-0031.*

[40] For copies of the EU draft regulation: *www.regulations.gov/contentStreamer?documentId=EERE-2013-BT-STD-0040-0031&disposition=attachment&contentType=pdf.*

[41] When express in terms of inlet conditions, as is industry convention.

TABLE IV.2—DRAFT FIRST TIER MINIMUM ENERGY EFFICIENCY REQUIREMENTS FOR STANDARD AIR COMPRESSORS FROM JANUARY 1, 2018

Standard air compressor type	Formula to calculate the *minimum* package isentropic efficiency, depending on the flow rate (V_1) an proportional loss factor (d)	Proportional loss factor (d) to be used in the formula
Fixed-speed Rotary Standard Air Compressor.	$(-.0928 \ln^2 (V_1) + 13.911 \ln (V_1) + 27.110) + (100-(-.0928 \ln^2 (V_1) + 13.911 \ln (V_1) + 27.110) * d/100$.	−5
Variable-speed Rotary Standard Air Compressor.	$(-1.549 \ln^2 (V_1) + 21.573 \ln (V_1) + 0.905) + (100-(-1.549 \ln^2 (V_1) + 21.573 \ln (V_1) + 0.905) * d/100$.	−5
Piston Standard Air Compressor.	$(8.931 \ln (V_1) + 31.477) + (100-(8.931 \ln (V_1) + 31.477) * d/100$	−5

TABLE IV.3—DRAFT SECOND TIER MINIMUM ENERGY EFFICIENCY REQUIREMENTS FOR STANDARD AIR COMPRESSORS FROM JANUARY 1, 2020

Standard air compressor type	Formula to calculate the *minimum* package isentropic efficiency, depending on the flow rate (V_1) an proportional loss factor (d)	Proportional loss factor (d) to be used in the formula
Fixed-speed Rotary Standard Air Compressor.	$(-0.928 \ln^2 (V_1) + 13.911 \ln (V_1) + 27.110) + (100-(-0.928 \ln^2 (V_1) + 13.911 \ln (V_1) + 27.110) * d/100$.	0
Variable-speed Rotary Standard Air Compressor.	$(-1.549 \ln^2 (V_1) + 21.573 \ln (V_1) + 0.905) + (100-(-1.549 \ln^2 (V_1) + 21.573 \ln (V_1) + 0.905) * d/100$.	0
Piston Standard Air Compressor.	$(8.931 \ln (V_1) + 31.477) + (100-(8.931 \ln (V_1) + 31.477) * d/100$	0

b. Next Steps

The outcome of this draft regulation is undetermined, based on publicly available information. Based on the process outlined on the Ecodesign Web site, the document may need to be reviewed internally by the European Commission, sent to the World Trade Organization, submitted to the Regulatory Committee (composed of one representative from each EU Member State), and the finally sent to the European Parliament and Council for scrutiny.[42]

In parallel, the EU has announced[43] a second compressors study focusing on low-pressure and oil-free equipment. From the Web site,[44] the study was kicked off on 17 June, 2015, draft publications for "Task 1–4" were posted on 31 March, 2016, and additional draft publications and stakeholder meetings are planned for the future (with dates yet to be determined). Publication of the final report is scheduled for April 2017.

3. Technology Options

In the Framework Document, DOE identified several design options that could be used to improve compressor package efficiency including:

- Improved controls;
- Improved bare compressor[45] efficiency;
- Improved cooling fan efficiency;
- Improved part-load efficiency;
- Improved electric motors; and
- The use of multistage compressors.

In response to the Framework Document, the Joint Commenters recommended that DOE consider equipment that affect compressor efficiency, such as zero-loss condensate traps and waste heat recovery technologies. (Joint Comment, No. 0016 at p. 3–4) Further, DOE research indicated that even though all of the options listed in the Framework Document were valid paths to higher efficiency, in practice, they were not considered independently by manufacturers but, rather, deployed as needed depending on the specifics of the compressor design and ultimate desired efficiency level. As for this document, DOE is altering its proposed categorization of options to improve efficiency. This is because the options listed above are in some cases able to be deployed independently (*e.g.*, cooling fan efficiency) and in other cases require coordination (*e.g.*, using a more efficient motor). Instead of a bottom-up approach, wherein DOE could attempt to assign a characteristic improvement, DOE's proposed approach "top-down," where the primary consideration is the overall package efficiency and exploration is of the overall cost required to achieve certain efficiencies. Instead of independent options, DOE will generally consider all efficiency improvement to come from a "package redesign" which could include any, or all of the listed options from the Framework Document. This package redesign can be thought of as including three broad categories of improvements:

- Multi-staging;
- Air-end Improvement; and
- Auxiliary Component Improvement.

These package redesign options are addressed separately in the sections that follow.

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[42] As detailed here: *www.eceee.org/ecodesign/products/Ecodesign135lg.png.*

[43] As viewed here: *http://www.eco-compressors.eu/documents.htm.*

[44] As viewed here: *http://www.eco-compressors.eu/documents.htm.*

[45] Frequently described in the compressor industry as an "air-end" or "airend." For the purposes of this rulemaking, DOE considers the terms to be synonymous.

a. Multi-Staging

Compressors ingest air at ambient conditions and compress it to a higher pressure required by the specific application. Compressors can perform this compression in one or multiple stages, where a stage corresponds to a single air-end and offers the opportunity for heat removal before the next stage. Units that compress the air from ambient to the specified design pressure of the compressor in one step are referred to as single-stage compressors, while units that use multiple steps are referred to as multistage compressors.

The act of compression generates inherent heat in a gas. If the process occurs quickly enough to limit the transfer of that heat to the environment, the compression is known as "adiabatic." By contrast, compression may be performed slowly such that heat flows from the gas at the same rate it is generated, and such that the temperature of the gas never exceeds that of the environment. This process is called "isothermal." DOE notes that a hotter gas is conceptually "harder" to compress; the compressor must overcome the heat energy present in the gas in order to continue the compression process. As a result, compression to a given volume requires less work if performed isothermally. "Real" (*i.e.*, not idealized in any respect) compressors are neither adiabatic nor isothermal, and dissipate some portion of compressive heat during the process. If a compressor is able to dissipate more heat, the resulting act of compression becomes easier and the compressor requires less input energy.

Multi-stage compressors are specifically designed to take advantage of this principle and split the compression process into two or more stages (each performed in a single air-end) to allow heat removal between the stages using a heat-exchange device sometimes called an "intercooler." The more stages used, the closer the compressor behavior comes to the isothermal ideal. Eventually, however, the benefits to adding further stages diminish; gains from each marginal stage is countered by the inherent inefficiencies of using smaller compressor units. Depending on the specific pressure involved, the optimal number of stages may vary widely. Most standard industrial air applications, however, do not use more than two stages.

Lubricant-free compressors typically realize greater efficiency gains than lubricated compressors, as the lubricant used, usually oil, acts as a coolant during the compression process, thus reducing the benefit of intercooling between stages.

b. Air-End Improvement

The efficiency of any given air-end depends upon a number of factors, including:

- Rated compressor output capacity;
- Compression chamber geometry;
- Operating speed;
- Surface finish;
- Manufacturing precision; and
- Designed equipment tolerances.

Each individual air-end has a best efficiency operating point based upon the characteristics listed. However, because air-ends can operate at multiple flow rates, manufacturers commonly utilize a given air-end in multiple compressor packages to reduce overall costs. This results in air-ends operating outside of the best efficiency point. Using one air-end in multiple compressor packages reduces the total number of air-ends a manufacturer needs to provide across the entire market, reducing costs at the price of reduced efficiency for those packages operating outside of the best efficiency point for the air-end. However, a manufacturer could redesign and optimize air-ends for any given flow rate and discharge pressure, increasing the overall efficiency of the compressor package.

Manufacturers can use two viable design pathways to increase compressor efficiency via air-end improvement. The first is to enhance a given air-end design's properties that affect efficiency, which could include manufacturing precision, surface finish, mechanical design clearances, and overall aerodynamic efficiency. The second is to more appropriately match air-ends and applications by building an overall larger number of air-end designs. As a result, a given air-end will be used less frequently in applications requiring it to operate further from its optimal operating point. These two practices may be employed independently or jointly; the option that is prioritized will depend on the specifics of a manufacturer's equipment line and the ultimate efficiency level desired.

c. Auxiliary Component Improvement

As discussed in the previous section, compressor manufacturers normally use one air-end in multiple compressor packages that are designed to operate at different discharge pressures and flow rates. Each compressor package consists of multiple design features that affect package efficiency, including valves, piping system, motor, capacity controls, fans, fan motors, filtration, drains, and driers. This equipment, for example, may control the flow of air, moisture, or oil, or the temperature and humidity of output air, or regulate temperature and operation, Compressor manufacturers do not normally provide the option to replace any individual part of a compressor package to increase efficiency, as each feature also has a direct effect on compressor performance. However, improving the operating characteristics of any of these "auxiliary" parts may offer a chance to improve the overall efficiency of the compressor package.

For example, package isentropic efficiency can be increased by reducing the internal pressure drop of the package using improved valves and pipe systems, or by improving the efficiency of (1) both the drive and fan motors (if present), (2) the fan, itself, (3) condensate drains, (4) both air and lubricant filters (if present), (4) air driers, and (5) controls. The improvement must be considered relative to a starting point, however. Even if the modifications could be deployed independently of each other, and not all can, the spread of efficiencies available in the market likely already reflects the more cost effective choice for improving efficiency at any given point. Perhaps one manufacturer, by virtue of features of its product lines, finds that reaching a given efficiency level in a particular equipment class, is most cost effectively done by improving Technology X. Another may find that it is more cost effective to improve Technology Y. And both could be correct, because each may have had a different starting point. Adding to this difficulty in ascertaining exactly when a given technology should be deployed (as with a bottom-up technology option approach) is a manufacturing reality—it is not cost effective to offer an infinite number of combinations and equipment sizes. Perhaps a compressor of output level between two others would most optimally use a fan sized specifically for that compressor. Because it is not cost effective for that compressor's manufacturer to stock another fan size, however, the compressor ends up sub-optimally using a fan either slightly too large or slightly too small, at some small cost to efficiency. So, less may be learned by scrutinizing the design choices of a specific model that is learned by considering the overall spread of costs and efficiencies available in the market at-large.

DOE notes that, because the compressor packages function as an ensemble of complementary parts, changing one part often calls for changing others. A special case may come with more efficient electric motors. Compressors normally use induction motors, which generally vary operating speed as efficiency is improved. Using a more efficient (but otherwise identical) induction motor without considering the rest of the compressor design could be counterproductive if the gains in motor efficiency were more than offset by subsequent loss in performance of the air-end and other parts. DOE's proposal assumes that the best-performing compressors on the market are built using the most-efficient available electric motors that are suited to the task. However, it could not confirm instances of a manufacturer using "super premium" or "IE4" induction motors, which appear to only recently have been made available commercially.[46] These terms ("super premium" and "IE4") have been used (in the U.S. and Europe, respectively) to describe the motor industry's "next tier" of efficiency. Possible reasons for this include the motors not being suitable for use in compressors, manufacturers are still exploring the relatively new motors and have not yet introduced equipment redesigned to make use of them, or that manufacturers are already, in fact, using them in the most efficient compressor offerings.

As an example of the influence of auxiliary componentry, the European Union Draft Standard offers a list of equipment with which the unit must be tested in order to certify compliance with standards.[47] It does not provide definitions for the terms, but as an example, for fixed-speed rotary compressors, required equipment includes:

1. Electric motor
2. Cooling fan
3. Compression element
4. Transmission (Belt, Gear, Coupling . . .), (if applicable)
5. Inlet filter
6. Inlet valve
7. Minimum pressure check valve/backflow check valve
8. Oil separator
9. Air piping
10. Oil piping
11. Oil pump (if applicable)
12. Oil filter
13. Oil cooler
14. Thermostatic valve
15. Electrical switchgear
16. Compressor after-cooler
17. Compressor control device (pressure switch, pressure transducer, etc.)

The list implies that each component affects efficiency, but does not say whether improvement of any particular component is possible. Nonetheless, it is illustrative of the set of componentry that needs to function harmoniously in order for the package to perform well.

DOE also requests comment specifically on IE4 or "super premium" electric motors, their suitability for compressors, and on any efforts to incorporate them into newly developed equipment. This is identified as Issue 11 in section VIII.E, "Issues on Which DOE Seeks Comment."

B. Screening Analysis

DOE generally uses the following four screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

1. *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

2. *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial products could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

3. *Impacts on product utility or product availability.* If it is determined that a technology would have significant adverse impact on the utility of the product to significant subgroups of consumers or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

4. *Adverse impacts on health or safety.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

See 10 CFR part 430, subpart C, appendix A, 4(a)(4) and 5(b).

Technologies that pass through the screening analysis are referred to as "design options" in the engineering analysis. The screening analysis and engineering analysis are discussed in detail, respectively, in Chapters 4 and 5 of the TSD.

The subsequent sections include comments from interested parties pertinent to the screening criteria, DOE's evaluation of each technology option against the screening analysis criteria, and whether DOE screened out a particular technology option based on the above criteria.

1. Screened-Out Technologies

Of the identified technology options, DOE was not able to identify any that would fail the screening criteria. The cost of additional engineering resources is considered in the Manufacturer Impact Analysis of section IV.J. DOE seeks comment on whether sufficient resources would be available such that criterion 2 of the screening analysis is satisfied. This is identified as Issue 12 in section VIII.E, "Issues on Which DOE Seeks Comment."

2. Remaining Technologies

After reviewing each technology, DOE tentatively concludes that all of the identified technologies listed in section IV.A.3 met all four screening criteria to be examined further as design options in DOE's NOPR analysis. In summary, DOE did not screen out the following technology options:

- Multi-staging
- Air-end Improvement
- Auxiliary Component Improvement

DOE determined that these technology options are technologically feasible because they are being used or have previously been used in commercially-available products or working prototypes. DOE also finds that all of the remaining technology options meet the other screening criteria (*i.e.*, practicable to manufacture, install, and service and do not result in adverse impacts on consumer utility, equipment availability, health, or safety). For additional details, see chapter 4 of the NOPR TSD.

C. Engineering Analysis

In the engineering analysis, DOE describes the relationship between manufacturer selling price (MSP) to improved compressor package isentropic efficiency. This relationship serves as the basis for cost-benefit calculations for individual end users, manufacturers, and the Nation. DOE typically structures the engineering analysis using one of three approaches: (1) Design-option; (2) efficiency level; or (3) reverse-engineering (or cost assessment). The design-option approach involves adding the estimated cost and associated efficiency of various efficiency-improving design changes to the baseline equipment to model different levels of efficiency. The efficiency level approach uses estimates of costs and efficiencies of equipment available on the market at distinct efficiency levels to develop the cost-efficiency relationship. The reverse-engineering approach involves testing equipment for efficiency and determining cost from a detailed bill of materials (BOM) derived from reverse-engineering representative equipment. The efficiency ranges from that of the least-efficient compressor sold today (*i.e.,* the baseline) to the maximum technologically feasible efficiency level. At each efficiency level examined, DOE determines the MSP; this relationship is referred to as a cost-efficiency curve.

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[46] One manufacturer, for example, describes its IE4 offerings here: *http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0040-0033.*

[47] See page 12 of *http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0040-0032.*

DOE conducted the engineering analysis for this rulemaking using an efficiency level approach. The decision to use this approach was made due to several factors, including the wide variety of equipment sizes analyzed, the availability of reliable performance data, the availability of a comparable European Union study, and the nature of the design options available for the equipment.

1. Summary of Significant Data Sources

For the engineering analysis, DOE utilized four principal data sources: (1) A database of compressor performance data from CAGI data sheets; (2) results from the EU Lot 31—Ecodesign Preparatory Study on Compressors; (3) a dataset of confidential manufacturer price data; and (4) a dataset of online retailer prices. The following subsections provide a brief description of each significant data source. Complete details are found in Chapter 5 of the NOPR TSD.

a. CAGI Data Sheets

CAGI's Performance Verification program provides manufacturers a standardized test method and performance data reporting format for rotary compressors.[48] DOE compiled into one database the information contained in every CAGI Performance Verification data sheet found on the Web sites of individual manufacturers. The resulting database contains performance data on each verified individual compressor and is referred to as the "CAGI database" throughout this NOPR.

b. Lot 31—European Union Ecodesign Preparatory Study on Compressors

The Lot 31 study, described in section IV.A.2, investigated three types of compressors: Fixed-speed rotary standard air compressors, variable-speed rotary standard air compressors, and piston standard air compressors. For each compressor type, the Lot 31 study established two types of relationships between package isentropic efficiency and flow rate. The first relationship represents the market average package isentropic efficiency, as a function of flow, for each compressor type; this relationship is referred to as the "Lot 31 regression curve." Generally the Lot 31 regression curves show an increase in package isentropic efficiency with an increase in flow rate.[49] The second relationship is derived from each Lot 31 regression curve and is known as the "Lot 31 regulation curve." Lot 31 regulation curves are scaled from the Lot 31 regression curves using "d-values", which are explained further in section IV.C.5. The regression curves allowed the Lot 31 study to evaluate various standard levels, similar to how DOE would typically investigate various efficiency and trial standard levels. Chapter 5 and chapter 3 of the NOPR TSD provide further detail on the Lot 31 regression and regulation curves.

To evaluate the energy savings potential of these efficiency levels, the Lot 31 study established relationships between compressor package isentropic efficiency, flow rate, and list price for each compressor type. List price represents the price paid by the final customer. To determine the manufacturer selling price (MSP), or the price paid by the manufacturer's first customer, the Lot 31 study scaled the list price by a constant markup factor. Throughout this NOPR these relationships will be referred to as the "Lot 31 MSP-Flow-Efficiency Relationships." Chapters 5 and chapter 3 of the NOPR TSD provide further detail on the Lot 31 MSP-Flow-Efficiency Relationships.

c. Confidential Manufacturer Equipment Data

DOE's contractor collected MSP and performance data for a range of compressor sizes and equipment classes from manufacturers.[50] These data are confidential and covered under non-disclosure agreement between the DOE contractor and the manufacturers. Data collected included pressure, flow rate, motor horsepower, full-load power (kW), motor efficiency, package specific power, and MSP for individual compressor models. Throughout this NOPR these will be referred to as the "confidential, U.S. MSP data."

d. Online Retailer Price Data

DOE collected price data for compressors sold by the online retailers Grainger,[51] Air Compressors Direct,[52] and Compressor World.[53] DOE also collected price and performance data for electric motors from Grainger to develop the scaling relationship for the R1_FS_L_XX equipment class described in section IV.C.5.c. These data are publicly available on each retailer's Web site and were compiled into a database that will be referred to as the "online retailer price database" throughout this NOPR.

2. Harmonization With Lot 31

The Lot 31 study resulted in a working document which proposed energy conservation standards for compressors. The current working document has not been formally adopted as a final regulation.

Many manufacturers participate in both the EU and U.S. markets, and during confidential interviews multiple manufacturers indicated that they have begun preparation to meet the requirements of the draft proposal, despite its not having been formally adopted as a regulation. Additionally DOE received comments from Atlas Copco that, due to the global nature of the industry, DOE should consider the findings in Lot 31 study. (Atlas-Copco, No. 0008 at p.2) And CAGI commented that it is important for regulations between the U.S. and EU to be similar given the global nature of the industry and many of its customers. (CAGI, No. 0030 at p. 1)

DOE recognizes that where applicable and justifiable it is beneficial to align with the Lot 31 study, because manufacturers have begun preparation for the Lot 31 proposal, the findings of the Lot 31 study can be useful, and it is important to have similar U.S. and EU regulations.

3. Representative Equipment

In the engineering analysis, DOE analyzed the MSP-efficiency relationships for the equipment classes specified in section IV.A.1. For both rotary and reciprocating equipment classes, DOE concluded, consistent with the EU Lot 31 study, that both incremental MSPs and attainable efficiency are independent of full-load operating pressure.[54] However, DOE understands that absolute equipment MSP may vary by pressure. As such, DOE selected representative pressures as the basis for the development of their MSP-efficiency relationships. The representative pressures are 125 psig for rotary equipment classes, and 175 psig for reciprocating equipment classes. These pressures were selected because they represent the majority of equipment available in the CAGI database, and online retailer price database. Additionally, Chapter 5 of the NOPR TSD provides information regarding the distribution of pressures among available rotary and reciprocating models.

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[48] For more information regarding CAGI's Performance Verification program, please see: *http://www.cagi.org/performance-verification/*

[49] See the Lot 31 Ecodesign Preparatory Study on Compressors Task 6 section 1.3.9, 1.3.10, and 1.3.11 here: *http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0040-0031.*

[50] In developing standards, DOE may choose to contract with third party organizations who specialized in various functions.

[51] *http://www.grainger.com/.*

[52] *http://www.aircompressorsdirect.com/.*

[53] *http://www.compressorworld.com/.*

DOE requests comment on the use of 125 and 175 psig as representative pressures to establish absolute MSPs for rotary and reciprocating equipment classes, respectively. This is identified as Issue 13 in section VIII.E, "Issues on Which DOE Seeks Comment."

As mentioned previously, DOE concluded, consistent with the EU Lot 31 study, that attainable efficiency is independent of full-load operating pressure.[55] Consequently, DOE used data from all full-load operating pressures represented in the CAGI database to establish efficiency levels for rotary air compressors. The CAGI database contains performance data for compressors ranging from 73 to 200 psig of full-load operating pressure and is representative of the full range of rotary compressor pressures available on the market. For reciprocating air compressors, DOE used a modified version of the EU Lot 31 regression and regulation curve for piston standard air compressors. The EU Lot 31 curves were recommended by the study author to be applicable to the full range of pressures proposed in the EU standard, ~101.5 – 203 psig (nominally: 7–14 bar (gauge)).[56] Section IV.C.5 contains complete details on the development of efficiency levels.

DOE requests comment on DOE's proposal to establish efficiency levels that are independent of pressure. This is identified as Issue 14 in section VIII.E, "Issues on Which DOE Seeks Comment."

DOE also requests comment on DOE's proposal to establish incremental MSPs that are independent of pressure. This is identified as Issue 15 in section VIII.E, "Issues on Which DOE Seeks Comment."

4. Design Options and Available Energy Efficiency Improvements

Section IV.A.2 identifies package redesign as the primary design option available to improve compressor efficiency. Multi-staging, air-end improvement, and auxiliary component improvement can be considered specialized cases of package redesign. In the first case, an additional air-end is introduced to the package, which affords the opportunity to dissipate heat after the first compression so that the second compression requires less work. Air-end improvement permits fine tuning of the air-end to the specific pressure and flow range in which it is expected to operate. The auxiliary component improvement option represents optimization of auxiliary components such as drives, motors, filters, valves, and piping. Ultimately, a manufacturer can implement a full package redesign to incrementally improve efficiency to any efficiency level, up to max-tech, as discussed in subsequent sections.

5. Efficiency Levels

For each equipment class, DOE established and analyzed six efficiency levels and a baseline to assess the relationship between MSP and package isentropic efficiency. As discussed previously, DOE's proposed efficiency levels are independent of full-load operating pressure. However, DOE concluded, consistent with the Lot 31 study,[57] that attainable package isentropic efficiency is a function of flow rate at full-load operating pressure. DOE notes that the test procedure NOPR proposed to define the term "full-load actual volume flow rate" to represent the actual volume flow rate of the compressor at the full-load operating pressure. As such, each efficiency level is defined by a mathematical relationship between full-load actual volume flow rate and package isentropic efficiency. Similarly to the Lot 31 study, DOE defines a regression curve (market average package isentropic efficiency, as a function of full-load actual volume flow rate) for each equipment class and uses specific "d-values" to shift the regression curve and establish efficiency levels for each equipment class, as discussed in section IV.C.1.b.

Similar to the approach used by the Lot 31 study, DOE defined the "d-value," as a percentage reduction in losses from the regression curve to theoretical 100 percent package isentropic efficiency. The d-value is used as a metric to characterize compressor package isentropic efficiency with respect to the mean efficiency of the market (*i.e.*, the regression curve), and establish and evaluate various efficiency levels for all equipment classes. A positive d-value shifts the regression curve to a higher package isentropic efficiency for all full-load actual volume flow rates, and a negative d-value shifts the regression curve to lower package isentropic efficiency. A d-value of 100 would generate an efficiency level at 100 percent package isentropic efficiency for all full-load actual volume flow rates. Alternatively, a d-value of 50 would generate an efficiency level that falls halfway between the regression curve and 100 percent package isentropic efficiency for all full-load actual volume flow rates. And a d-value of zero would generate an efficiency level equal to the regression curve.

For each equipment class, DOE established efficiency levels at max-tech and a d-value of zero. DOE also established two intermediary efficiency levels between the baseline and a d-value of zero, and two efficiency levels between the d-value of zero level and max-tech.

For all equipment classes, efficiency level (EL) 6 represents the max-tech efficiency level. DOE considers technologies to be technologically feasible if they are incorporated in any currently available equipment or working prototypes. A max-tech level results from the combination of design options predicted to result in the highest efficiency level possible for an equipment class. DOE considers compressors a mature technology, with all available design options already existing in the marketplace. Therefore, for compressors, the max-tech efficiency level coincides with the maximum available efficiency already offered in the marketplace. As a result, DOE performed market-based analyses to determine max-tech/max-available levels. As with efficiency level, the max-tech/max-available levels are defined by d-values for each equipment class. Discussion of the process used to determine max-tech efficiency levels is in section IV.C.5 as well as chapter 5 of the NOPR TSD.

For all equipment classes, the baseline defines the lowest efficiency equipment present in the market for each equipment class. DOE established baselines, represented by d-values, for each equipment class by reviewing available compressor performance data. Chapter 5 of the NOPR TSD provides additional information on the process used to select baseline efficiency levels.

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[54] See the Lot 31 Ecodesign Preparatory Study on Compressors Task 6 section 1.2.2 and Task 7 section 2.4.1 here: *http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0040-0031.*

[55] See the Lot 31 Ecodesign Preparatory Study on Compressors Task 6 section 1.2.2 here: *http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0040-0031.*

[56] See the definition of standard air compressor in the working document here: *http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0040-0031.*

[57] Discussed often, *e.g.*, Task 6 Section 1.3. See: *http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0040-0031.*

Jenny commented that with the variety of air compressors available on the market, selecting baseline levels is difficult. Jenny added that larger manufacturers are more likely to test equipment efficiency—and as a result, Jenny cautioned that they may be unfairly represented in the baseline because smaller manufacturers are less likely to test equipment. (Jenny, No. 0005 at p. 4)

DOE recognizes that there are a variety of compressors available on the market that represent a range of efficiency levels. For this rulemaking, the baseline represents the lowest efficiency equipment commonly sold on the market; independent of the manufacturer. DOE used all available data to select the baseline. DOE requests additional data which can be used to refine its current baseline, max-tech, and efficiency level assumptions. This is identified as Issue 16 in section VIII.E, "Issues on Which DOE Seeks Comment."

For all equipment classes, EL 3 corresponds to a d-value of zero, which represents the mean efficiency available on the market. The European Union draft regulation proposed a d-value of zero for a minimum energy efficiency requirement in 2020.[58] DOE notes that although the EU Lot 31 draft regulation proposes to cover only fixed-speed rotary standard air compressors, variable-speed rotary standard air compressors, and piston standard air compressors, DOE chose to evaluate a d-value of zero for all equipment classes.

EL 1 and EL 2 are established as intermediary efficiency levels one-third and two-thirds of the way, respectively, between the baseline and EL 3. EL 4 is an efficiency level established slightly above EL 3 to evaluate the sensitivity of going above the EU Lot 31 draft regulation. EL 5 is an intermediary efficiency level established approximately halfway between EL 3 and EL 6. The specific d-values for EL 1, 2, 4, and 5 vary for each equipment class.

As discussed in section IV.C.3, efficiency levels for each equipment class are independent of full-load operating pressure.

DOE pursued different analytical methods to establish efficiency levels for different equipment classes. These analytical methods can be grouped into three general categories presented in Table IV.4.

TABLE IV.4—EFFICIENCY LEVEL ANALYTICAL METHODS

Method	Applicable equipment classes
Direct from Lot 31	RP_FS_L_AC RP_VS_L_AC R3_FS_L_XX
Developed from CAGI Database	RP_FS_LF_AC RP_VS_LF_AC
Scaled from Other Equipment Classes, Using U.S. Data	RP_FS_L_WC RP_VS_L_WC RP_FS_LF_WC RP_VS_LF_WC R1_FS_L_XX

The following sections present the analytical methods used by DOE to develop the efficiency levels for each equipment class.

a. Direct From Lot 31

Table IV.5 shows the three equipment classes for which efficiency levels are derived from analogous EU Lot 31 regression curves.

TABLE IV.5—EQUIPMENT CLASS EFFICIENCY LEVELS DERIVED FROM LOT 31

Equipment Class	EU Lot 31 regression curve
RP_FS_L_AC	Fixed speed rotary standard air compressors.
RP_VS_L_AC	Variable-speed rotary standard air compressors.
R3_FS_L_XX	Piston standard air compressors.

The analogous EU Lot 31 regression curves for the RP_FS_L_AC and RP_VS_L_AC equipment classes are based on CAGI data for equipment sold in the United States at the time of the Lot 31 study.[59] DOE regressed the CAGI database data for these two equipment classes and compared the results to the analogous EU Lot 31 regression curves. DOE found that the shape of the new CAGI database curves were a close approximation to the Lot 31 regression curves and the magnitude (or y-axis scaling) of the curves were also a close fit with the EU curve. Generally, the RP_FS_L_AC CAGI database regression curve was within one efficiency point of the EU curve and the RP_VS_L_AC CAGI database curve was within two efficiency points of the EU curve for flow rates where CAGI data was available. Ultimately, due to the similarity of the regressions and the overall benefits of harmonizing with the European Union, DOE decided to use Lot 31 regressions, rather than the regressions obtained from the current CAGI database. DOE notes that differences between the CAGI database regression curves and the EU Lot 31 regression curves can be compensated through use of d-values to scale to alternative efficiencies. Chapter 5 of the NOPR TSD provides complete details on the relationships between the EU Lot 31 regression curves and the current CAGI database regression curves.

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[58] For more information regarding the draft regulation see: *http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0040-0031.*

[59] See Task 6 Section 1.3: *http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0040-0031.*

Unlike rotary air compressors, DOE lacks publicly available performance data for reciprocating air compressors. Furthermore, discussions with industry experts indicate that the EU reciprocating air compressor markets may not be directly analogous or representative of the U.S. market. Specifically, industry experts indicate that EU reciprocating air compressors are predominantly single-stage units designed for lower operating pressures and duty cycles. Alternatively, industry experts indicate that U.S. reciprocating compressors are a more balanced mix of single- and two-stage units, typically designed for higher duty cycles. As described in section IV.A.3.a, single-stage units are inherently less efficient than two-stage units, and single-stage units tend to be designed for lower flow rates. These inherent differences in efficiency and flow rate make it difficult to use aggregated EU market data as a proxy for the U.S. market.

Ultimately, in the absence of sufficient U.S. efficiency data, DOE based efficiency levels for the R3_FS_L_XX equipment class on the EU Lot 31 regression curve for piston standard air compressors. However, DOE increased the max-tech level for R3_FS_L_XX beyond that of the Lot 31 study, based on limited confidential performance data collected by DOE's contractor. Chapter 5 of the NOPR TSD provides complete details on derivation of efficiency levels and max-tech for the R3_FS_L_XX equipment class.

DOE requests comment on the use of the EU Lot 31 regression curve for piston standard air compressors to define the regression curve of the R3_FS_L_XX equipment class. This is identified as Issue 17 in section VIII.E, "Issues on Which DOE Seeks Comment."

i. RP_FS_L_AC Efficiency Levels

The proposed regression curve for the RP_FS_L_AC equipment class is as follows:

$$\eta_{Isen\_Regr\_\mathrm{RP\_FS\_L\_AC}} = -0.00928 \times \ln(0.472 \times V_1)^2 + 0.139 \times \ln(0.472 \times V_1) + 0.271$$

Equation 3

Where:

- $\eta_{Isen\_Regr\_RP\_FS\_L\_AC}$ is the regression curve package isentropic efficiency for the RP_FS_L_AC equipment class, and
- V_1 is full-load actual volume flow rate (cubic feet per minute).

The proposed efficiency levels for the RP_FS_L_AC equipment class are defined by the following equation, in conjunction with the d-values in Table IV.6.

$$\eta_{Isen\_STD\_\mathrm{RP\_FS\_L\_AC}} = \eta_{Isen\_Regr\_\mathrm{RP\_FS\_L\_AC}} + \left(1 - \eta_{Isen\_Regr\_\mathrm{RP\_FS\_L\_AC}}\right) \times d/100$$

Equation 4

Where:

- $\eta_{Ise\_STD\_RP\_FS\_L\_AC}$ is package isentropic efficiency for the RP_FS_L_AC equipment class, for a selected efficiency level,
- $\eta_{Isen\_Regr\_RP\_FS\_L\_AC}$ is the regression curve package isentropic efficiency for the RP_FS_L_AC equipment class, and
- d is the d-value for each proposed efficiency level, as specified in Table IV.6.

TABLE IV.6—EFFICIENCY LEVELS ANALYZED FOR ROTARY, LUBRICATED, AIR-COOLED, FIXED-SPEED, THREE-PHASE

Efficiency level *	d-Value
Baseline	−49
EL 1	−30
EL 2	−15
EL 3	0
EL 4	5
EL 5	13
EL 6	30

* DOE notes that in this NOPR, the spreadsheets for the downstream economic analyses contain 4 auxiliary efficiency levels, beyond the primary efficiency levels listed in this table; these are EL 4.1, 5.1, 5.2, and 5.3. These auxiliary efficiency levels were maintained in the spreadsheets to increase the granularity and improve analytical accuracy of the economic analyses, however, they are not carried beyond the spreadsheets. Cost-efficiency relationships for these ELs are provided in Chapters 5 of the NOPR TSD.

ii. RP_VS_L_AC Efficiency Levels

The proposed regression curve for the RP_VS_L_AC equipment is as follows:

$$\eta_{Isen\_Regr\_\mathrm{RP\_VS\_L\_AC}} = -0.0155 \times \ln(0.472 \times V_1)^2 + 0.216 \times \ln(0.472 \times V_1) + 0.00905$$

Equation 5

Where:

- $\eta_{Isen\_Regr\_RP\_VS\_L\_AC}$ is the regression curve package isentropic efficiency for the RP_VS_L_AC equipment class, and
- V_1 is full-load actual volume flow rate (cubic feet per minute).

The proposed efficiency levels for the RP_VS_L_AC equipment class are defined by the following equation, in conjunction with the d-values in Table IV.7.

$$\eta_{Isen\_STD\_RP\_VS\_L\_AC} = \eta_{Isen\_Regr\_RP\_VS\_L\_AC} + \left(1 - \eta_{Isen\_Regr\_RP\_VS\_L\_AC}\right) \times d/100$$

Equation 6

Where:

- $\eta_{Isen\_STD\_RP\_VS\_L\_AC}$ is package isentropic efficiency for the RP_VS_L_AC equipment class, for a selected efficiency level,
- $\eta_{Isen\_Regr\_RP\_VS\_L\_AC}$ is the regression curve package isentropic efficiency for the RP_VS_L_AC equipment class, and
- d is the d-value for each proposed efficiency level, as specified in Table IV.7.

TABLE IV.7—EFFICIENCY LEVELS ANALYZED FOR ROTARY, LUBRICATED, AIR-COOLED, VARIABLE-SPEED, THREE-PHASE

Efficiency level *	d-Value
Baseline	−30
EL 1	−20
EL 2	−10
EL 3	0
EL 4	5
EL 5	15
EL 6	33

* DOE notes that in this NOPR, the spreadsheets for the downstream economic analyses contain 4 auxiliary efficiency levels, beyond the primary efficiency levels listed in this table; these are EL 4.1, 5.1, 5.2, and 5.3. These auxiliary efficiency levels were maintained in the spreadsheets to increase the granularity and improve analytical accuracy of the economic analyses, however, they are not carried beyond the spreadsheets. Cost-efficiency relationships for these ELs are provided in Chapters 5 of the NOPR TSD.

iii. R3_FS_L_XX Efficiency Levels

The proposed regression curve for the R3_FS_L_XX equipment class is as follows:

$$\eta_{Isen\_Regr\_R3\_FS\_L\_XX} = 0.0893 \times \ln(0.472 \times V_1) + 0.315$$

Equation 7

Where:

- $\eta_{Isen\_Regr\_R3\_FS\_L\_XX}$ is the regression curve package isentropic efficiency for the R3_FS_L_XX equipment class, and
- V_1 is full-load actual volume flow rate (cubic feet per minute).

The proposed efficiency levels for the R3_FS_L_XX equipment class are defined by the following equation, in conjunction with the d-values in Table IV.8.

$$\eta_{Isen\_STD\_R3\_FS\_L\_XX} = \eta_{Isen\_Regr\_R3\_FS\_L\_XX} + \left(1 - \eta_{Isen\_Regr\_R3\_FS\_L\_XX}\right) \times d/100$$

Equation 8

Where:

- $\eta_{Isen\_STD\_R3\_FS\_L\_XX}$ is package isentropic efficiency for the R3_FS_L_XX equipment class, for a selected efficiency level,
- $\eta_{Isen\_Regr\_R3\_FS\_L\_XX}$ is the regression curve package isentropic efficiency for the R3_FS_L_XX equipment class, and
- d is the d-value for each proposed efficiency level, as specified in Table IV.8.

TABLE IV.8—EFFICIENCY LEVELS ANALYZED FOR RECIPROCATING, LUBRICATED, AIR-COOLED OR WATER-COOLED, FIXED-SPEED, THREE-PHASE

Efficiency level *	d-Value
Baseline	−18
EL 1	−15
EL 2	−5
EL 3	0
EL 4	5
EL 5	20
EL 6	60

* DOE notes that in this NOPR, the spreadsheets for the downstream economic analyses contain 4 auxiliary efficiency levels, beyond the primary efficiency levels listed in this table; these are EL 4.1, 5.1, 5.2, and 5.3. These auxiliary efficiency levels were maintained in the spreadsheets to increase the granularity and improve analytical accuracy of the economic analyses, however, they are not carried beyond the spreadsheets. Cost-efficiency relationships for these ELs are provided in Chapters 5 of the NOPR TSD.

DOE requests comment and supporting data on the efficiency levels established for the RP_FS_L_AC, RP_VS_L_AC, and R3_FS_L_XX equipment classes. This is identified as Issue 18 in section VIII.E, "Issues on Which DOE Seeks Comment."

b. Developed From CAGI Database

The proposed regression curve and efficiency levels for the RP_FS_LF_AC and RP_VS_LF_AC equipment classes are derived from data within the CAGI database. DOE notes that available CAGI data in each equipment class does not span the entire range of full-load actual volume flow rates evaluated. There was a lack of data at low and high full-load actual volume flow rates, so DOE based portions of the RP_FS_LF_AC and RP_VS_LF_AC equipment class regression curves on the analogous lubricated equipment classes. Consequently, the regression curves for the RP_FS_LF_AC and RP_VS_LF_AC equipment classes are composed of three piece-wise continuous functions. Chapter 5 of the NOPR TSD provides complete details on the curves developed based on the CAGI database.

i. RP_FS_LF_AC Efficiency Levels

The proposed regression curve for the RP_FS_LF_AC equipment class is as follows:

$$\eta_{Isen\_Regr}\text{RP\_FS\_LF\_AC} = a_{RP\_FS\_LF\_AC} \times \ln(0.472 \times V_1)^2 + b_{RP\_FS\_LF\_AC} \times \ln(0.472 \times V_1) + c_{RP\_FS\_LF\_AC}$$

Equation 9

Where:

- $\eta_{Isen\_Regr\_\mathrm{RP\_FS\_LA}}$ is the regression curve package isentropic efficiency for the RP_FS_LF_AC equipment class,
- $a_{RP\_FS\_LF\_AC}$ is a coefficient from Table IV.9,
- $b_{RP\_FS\_LF\_AC}$ is a coefficient from Table IV.9,
- $c_{RP\_FS\_LF\_AC}$ is a coefficient from Table IV.9, and
- V_1 is full-load actual volume flow rate (cubic feet per minute).

TABLE IV.9—COEFFICIENTS FOR RP_FS_LF_AC REGRESSION CURVE

Full-load actual volume flow rate range (acfm)	$a_{RP\_FS\_LF\_AC}$	$b_{RP\_FS\_LF\_AC}$	$c_{RP\_FS\_LF\_AC}$
$0<V_1\leq161$	−0.00928	0.139	0.191
$161<V_1\leq2125$	0.00281	0.0344	0.417
$2125<V_1$	−0.00928	0.139	0.271

The proposed efficiency levels for the RP_FS_LF_AC equipment class are defined by the following equation, in conjunction with the d-values in Table IV.10.

$$\eta_{Isen\_STD}\text{RP\_FS\_LF\_AC} = \eta_{Isen\_Regr}\text{RP\_FS\_LF\_AC} + \left(1 - \eta_{Isen\_Regr}\text{RP\_FS\_LF\_AC}\right) \times d/100$$

Equation 10

Where:

- $\eta_{Isen\_STD\_\mathrm{RP\_FS\_LF\_AC}}$ is package isentropic efficiency for the RP_FS_LF_AC equipment class, for a selected efficiency level,
- $\eta_{Isen\_Regr\_\mathrm{RP\_FS\_LF\_AC}}$ is the regression curve package isentropic efficiency for the RP_FS_LF_AC equipment class, and
- d is the d-value for each proposed efficiency level, as specified in Table IV.10.

TABLE IV.10—EFFICIENCY LEVELS ANALYZED FOR ROTARY, LUBRICANT-FREE, AIR-COOLED, FIXED-SPEED, THREE-PHASE

Efficiency level *	d-Value
Baseline	−11
EL 1	−10
EL 2	−5
EL 3	0
EL 4	2.5
EL 5	7.5
EL 6	10

* DOE notes that in this NOPR, the spreadsheets for the downstream economic analyses contain 1 auxiliary efficiency level, beyond the primary efficiency levels listed in this table; this is EL 4.1. This auxiliary efficiency level was maintained in the spreadsheets to increase the granularity and improve analytical accuracy of the economic analyses, however, they are not carried beyond the spreadsheets. To maintain a consistent analytical structure with other equipment classes the spreadsheets contain EL 5.1, 5.2, and 5.3 which are equal to EL 6. Cost-efficiency relationships for these ELs are provided in Chapters 5 of the NOPR TSD.

ii. RP_VS_LF_AC Efficiency Levels

The proposed regression curve for the RP_VS_LF_AC equipment class is as follows:

$$\eta_{Isen\_Regr\_\text{RP\_VS\_LF\_AC}} = a_{RP\_VS\_LF\_AC} \times \ln(0.472 \times V_1)^2 + b_{RP\_VS\_LF\_AC} \times \ln(0.472 \times V_1) + c_{RP\_VS\_LF\_AC}$$

Equation 11

Where:

- $\eta_{Isen\_Regr\_RP\_VP\_LF\_AC}$ is the regression curve package isentropic efficiency for the RP_VS_LF_AC equipment class,
- $\alpha_{RP\_VS\_LF\_AC}$ is a coefficient from Table IV.11,
- $b_{RP\_VS\_LF\_AC}$ is a coefficient from Table IV.11,
- $c_{RP\_VS\_LF\_AC}$ is a coefficient from Table IV.11, and
- V_1 is full-load actual volume flow rate (cubic feet per minute).

TABLE IV.11—COEFFICIENTS FOR RP_VS_LF_AC REGRESSION CURVE

Full-load actual volume flow rate range (acfm)	$\alpha_{RP\_VP\_LF\_AC}$	$b_{RP\_VP\_LF\_AC}$	$c_{RP\_VP\_LF\_AC}$
$0<V_1\leq 102$	−0.0155	0.216	−0.0984
$102<V_1\leq 1426$	0.000	0.0958	0.134
$1426<V_1$	−0.0155	0.216	0.00905

The proposed efficiency levels for the RP_VS_LF_AC equipment class are defined by the following equation, in conjunction with the d-values in Table IV.12.

$$\eta_{Isen\_STD\_\text{RP\_VS\_LF\_AC}} = \eta_{Isen\_Regr\_\text{RP\_VS\_LF\_AC}} + \left(1 - \eta_{Isen\_Regr\_\text{RP\_VS\_LF\_AC}}\right) \times d/100$$

Equation 12

Where:

- $\eta_{Isen\_STD\_RP\_VS\_LF\_AC}$ is package isentropic efficiency for the RP_VS_LF_AC equipment class, for a selected efficiency level,
- $\eta_{Isen\_Regr\_RP\_VS\_LF\_AC}$ is the regression curve package isentropic efficiency for the RP_VS_LF_AC equipment class, and
- d is the d-value for each proposed efficiency level, as specified in Table IV.12.

TABLE IV.12—EFFICIENCY LEVELS ANALYZED FOR ROTARY, LUBRICANT-FREE, AIR-COOLED, VARIABLE-SPEED, THREE-PHASE

Efficiency level *	d-Value
Baseline	−13
EL 1	−10
EL 2	−5
EL 3	0
EL 4	2.5
EL 5	7.5
EL 6	13

* DOE notes that in this NOPR, the spreadsheets for the downstream economic analyses contain 1 auxiliary efficiency level, beyond the primary efficiency levels listed in this table; this is EL 4.1. This auxiliary efficiency level was maintained in the spreadsheets to increase the granularity and improve analytical accuracy of the economic analyses, however, they are not carried beyond the spreadsheets. To maintain a consistent analytical structure with other equipment classes the spreadsheets contain EL 5.1, 5.2, and 5.3 which are equal to EL 6. Cost-efficiency relationships for these ELs are provided in Chapters 5 of the NOPR TSD.

DOE notes that the proposed regression curve and efficiency levels for the RP_VS_LF_AC equipment class were established with a limited set of data from the CAGI database. Specifically, the CAGI database included data for 13 RP_VS_LF_AC air compressors as compared to 60 for RP_FS_LF_AC compressors, and 835 for RP_FS_L_AC compressors. Chapter 5 of the NOPR TSD contains complete details on the datasets and regression methodologies.

DOE requests comment on the proposed efficiency levels selected for the RP_VS_LF_AC equipment class regarding their representation of the market, and any data that could improve the analysis. This is identified as Issue 19 in section VIII.E, "Issues on Which DOE Seeks Comment."

c. Scaled From Other Equipment Classes, Using U.S. Data

DOE scaled efficiency levels for water-cooled rotary from analogous air-cooled rotary equipment classes based on relationships developed from the CAGI database. Additionally, DOE scaled R1_FS_L_XX efficiency levels from R3_FS_L_XX efficiency levels based on motor data in the online retailer price database.

Many air-cooled rotary air compressors are also offered in a water-cooled variant. These variants are typically identical, except for the cooling method employed. The air-cooled variant will utilize one or more cooling fans and heat exchangers to remove heat from the compressed air. Alternatively, a water-cooled variant utilizes chilled water (from a separate chilled water system) and one or more heat exchanges to remove heat from the compressed air. Typically, both variants will remove the same amount of heat and offer the same output flow and pressure. The key difference is that the fan(s) used in the air-cooled unit are within the compressor package and cause the air-cooled unit to consume more energy than the water-cooled unit, which receives water pumped from a chiller external to the compressor package. This means that for water-cooled units the energy used to remove heat by external pumps and chillers is not accounted for in the test procedure and not reflected in package isentropic efficiency. Consequently, DOE established its proposed efficiency levels for water-cooled equipment classes by scaling analogous air-cooled efficiency levels to account for the lack of a fan motor. Specifically, for each equipment class, DOE developed a scaling relationship using the CAGI database and applied it to efficiency levels from the associated air-cooled equipment class.

Many reciprocating air compressors with motor power ≤7.5-hp are offered with both single- and three-phase induction motors. These variants are typically identical, except for the motor. Consequently, DOE established its proposed efficiency levels for single-phase equipment classes by scaling the analogous three-phase efficiency levels to account for inherent efficiency differences between single- and three-phase motors. DOE developed a scaling relationship using the online retailer price database and applied it to efficiency levels from R3_FS_L_XX. Ultimately, DOE established the proposed single- and three-phase equipment classes and efficiency levels, such that analogous single- and three-phase equipment would be rated at approximately the same efficiency level, when evaluated with the proposed DOE test procedure.

The following subsections provide the equations and d-values used to establish the proposed efficiency levels for the RP_FS_L_WC, RP_VS_L_WC, RP_FS_LF_WC, RP_VS_LF_WC, and R1_FS_L_XX equipment classes. Chapter 5 of the NOPR TSD provides complete details on the scaling relationships used to develop the proposed efficiency levels for equipment classes discussed in this section.

i. RP_FS_L_WC Efficiency Levels

The proposed efficiency levels for the RP_FS_L_WC equipment class are derived from the RP_FS_L_AC equipment class.

The proposed efficiency levels for the RP_FS_L_WC equipment class are defined by the following equation, in conjunction with the d-values in Table IV.13.

$$\eta_{Isen\_STD\_RP\_FS\_L\_WC} = 0.0235 + \eta_{Isen\_Regr\_RP\_FS\_L\_AC} + \left(1 - \eta_{Isen\_Regr\_RP\_FS\_L\_AC}\right) \times d/100$$

Equation 13

Where:

- $\eta_{Isen\_STD\_RP\_FS\_L\_WC}$ is package isentropic efficiency for the RP_FS_L_WC equipment class, for a selected efficiency level,
- $\eta_{Isen\_Regr\_RP\_FS\_L\_AC}$ is the regression curve package isentropic efficiency for the RP_FS_L_AC equipment class, and
- *d* is the d-value for each proposed efficiency level, as specified in Table IV.13.

TABLE IV.13—EFFICIENCY LEVELS ANALYZED FOR ROTARY, LUBRICATED, WATER-COOLED, FIXED-SPEED, THREE-PHASE

Efficiency level *	d-Value
Baseline	−49
EL 1	−30
EL 2	−15
EL 3	0
EL 4	5
EL 5	13
EL 6	30

* DOE notes that in this NOPR, the spreadsheets for the downstream economic analyses contain 4 auxiliary efficiency levels, beyond the primary efficiency levels listed in this table; these are EL 4.1, 5.1, 5.2, and 5.3. These auxiliary efficiency levels were maintained in the spreadsheets to increase the granularity and improve analytical accuracy of the economic analyses, however, they are not carried beyond the spreadsheets. Cost-efficiency relationships for these ELs are provided in Chapters 5 of the NOPR TSD.

ii. RP_VS_L_WC Efficiency Levels

The proposed efficiency levels for the RP_VS_L_WC equipment class are derived from the RP_VS_L_AC equipment class.

The proposed efficiency levels for the RP_VS_L_WC equipment class are defined by the following equation, in conjunction with the d-values in Table IV.14.

$$\eta_{Isen\_STD\_RP\_VS\_L\_WC} = 0.0235 + \eta_{Isen\_Regr\_RP\_VS\_L\_AC} + \left(1 - \eta_{Isen\_Regr\_RP\_VS\_L\_AC}\right) \times d/100$$

Equation 14

Where:

- $\eta_{Isen—STD\_RP\_VS\_L\_WC}$ is package isentropic efficiency for the RP_VS_L_WC equipment class, for a selected efficiency level,
- $\eta_{Isen—Regr\_RP\_VS\_L\_AC}$ is the regression curve package isentropic efficiency for the RP_VS_L_AC equipment class, and
- *d* is the d-value for each proposed efficiency level, as specified in Table IV.14.

TABLE IV.14—EFFICIENCY LEVELS ANALYZED FOR ROTARY, LUBRICATED, WATER-COOLED, VARIABLE-SPEED, THREE-PHASE

Efficiency level *	d-Value
Baseline	−45
EL 1	−30
EL 2	−15
EL 3	0
EL 4	5
EL 5	15
EL 6	34

* DOE notes that in this NOPR, the spreadsheets for the downstream economic analyses contain 4 auxiliary efficiency levels, beyond the primary efficiency levels listed in this table; these are EL 4.1, 5.1, 5.2, and 5.3. These auxiliary efficiency levels were maintained in the spreadsheets to increase the granularity and improve analytical accuracy of the economic analyses, however, they are not carried beyond the spreadsheets. Cost-efficiency relationships for these ELs are provided in Chapters 5 of the NOPR TSD.

iii. RP_FS_LF_WC Efficiency Levels

The proposed efficiency levels for the RP_FS_LF_WC equipment class are derived from the RP_FS_LF_AC equipment class.

The proposed efficiency levels for the RP_FS_LF_WC equipment class are defined by the following equation, in conjunction with the d-values in Table IV.16.

$$\eta_{Isen\_STD}\text{\_RP\_FS\_LF\_WC} = a_{RP\_FS\_LF\_WC} \times \ln(0.472 \times V_1)^2 + b_{RP\_FS\_LF\_WC} \times \ln(0.472 \times V_1) + c_{RP\_FS\_LF\_WC} + \eta_{Isen\_Regr}\text{\_RP\_FS\_LF\_AC} + \left(1 - \eta_{Isen\_Regr}\text{\_RP\_FS\_LF\_AC}\right) \times d/100$$

Equation 15

Where:

- $\eta_{Isen\_STD\_RP\_FS\_LF\_WC}$ is package isentropic efficiency for the RP_FS_LF_WC equipment class, for a selected efficiency level,
- $a_{RP\_FS\_LF\_WC}$ is a coefficient from Table IV.15,
- $b_{RP\_FS\_LF\_WC}$ is a coefficient from Table IV.15,
- $c_{RP\_FS\_LF\_WC}$ is a coefficient from Table IV.15,
- V_1 is full-load actual volume flow rate (cubic feet per minute),
- η_{Isen_Regr}_RP_FS_LF_AC is the regression curve package isentropic efficiency for the RP_FS_LF_AC equipment class, and
- *d* is the d-value for each proposed efficiency level, as specified in Table IV.16.

TABLE IV.15—COEFFICIENTS FOR RP_FS_LF_WC EFFICIENCY LEVEL

Full-load actual volume flow rate range (acfm)	$a_{RP\_FS\_LF\_WC}$	$b_{RP\_FS\_LF\_WC}$	$c_{RP\_FS\_LF\_WC}$
$0 < V_1 < 102$	0	0	0
$102 \leq V_1$	−0.00924	0.117	−0.315

TABLE IV.16—EFFICIENCY LEVELS ANALYZED FOR ROTARY, LUBRICANT-FREE, WATER-COOLED, FIXED-SPEED, THREE-PHASE

Efficiency level *	d-Value
Baseline	−11
EL 1	−10
EL 2	−5
EL 3	0
EL 4	2.5
EL 5	7.5
EL 6	10

* DOE notes that in this NOPR, the spreadsheets for the downstream economic analyses contain 2 auxiliary efficiency levels, beyond the primary efficiency levels listed in this table; these are EL 4.1, and 5.1. These auxiliary efficiency levels were maintained in the spreadsheets to increase the granularity and improve analytical accuracy of the economic analyses, however, they are not carried beyond the spreadsheets. To maintain a consistent analytical structure with other equipment classes the spreadsheets contain EL 5.2, and 5.3 which are equal to EL 6. Cost-efficiency relationships for these ELs are provided in Chapters 5 of the NOPR TSD.

iv. RP_VS_LF_WC Efficiency Levels

The proposed efficiency levels for the RP_VS_LF_WC equipment class are derived from the RP_VS_LF_AC equipment class.

The proposed efficiency levels for the RP_VS_LF_WC equipment class are defined by the following equation, in conjunction with the d-values in Table IV.18.

$$\eta_{Isen\_STD}\text{\_RP\_VS\_LF\_WC} = a_{RP\_VS\_LF\_WC} \times \ln(0.472 \times V_1)^2 + b_{RP\_VS\_LF\_WC} \times \ln(0.472 \times V_1) + c_{RP\_VS\_LF\_WC} + \eta_{Isen\_Regr}\text{\_RP\_VS\_LF\_AC} + \left(1 - \eta_{Isen\_Regr}\text{\_RP\_VS\_LF\_AC}\right) \times d/100$$

Equation 16

Where:

- $\eta_{Isen\_STD\_RP\_VS\_LF\_WC}$ is package isentropic efficiency for the RP_VS_LF_WC equipment class, for a selected efficiency level,
- $a_{RP\_VS\_LF\_WC}$ is a coefficient from Table IV.17,
- $b_{RP\_VS\_LF\_WC}$ is a coefficient from Table IV.17,
- $c_{RP\_VS\_LF\_WC}$ is a coefficient from Table IV.17,
- V_1 is full-load actual volume flow rate (cubic feet per minute),
- $\eta_{Isen\_Regr\_RP\_VS\_LF\_AC}$ is the regression curve package isentropic efficiency for the RP_VS_LF_AC equipment class, and
- *d* is the d-value for each proposed efficiency level, as specified in Table IV.18.

TABLE IV.17—COEFFICIENTS FOR RP_VS_LF_WC EFFICIENCY LEVEL

Full-load actual volume flow rate range (acfm)	$a_{RP\_VS\_LF\_WC}$	$b_{RP\_VS\_LF\_WC}$	$c_{RP\_VS\_LF\_WC}$
$0 < V_1 < 74$	0	0	0
$74 \le V_1$	0.000173	0.00783	−0.0300

TABLE IV.18—EFFICIENCY LEVELS ANALYZED FOR ROTARY, LUBRICANT-FREE, WATER-COOLED, VARIABLE-SPEED, THREE-PHASE

Efficiency level *	d-Value
Baseline	−13
EL 1	−10
EL 2	−5
EL 3	0
EL 4	2.5
EL 5	7.5
EL 6	13

* DOE notes that in this NOPR, the spreadsheets for the downstream economic analyses contain 2 auxiliary efficiency levels, beyond the primary efficiency levels listed in this table; these are EL 4.1, and 5.1. These auxiliary efficiency levels were maintained in the spreadsheets to increase the granularity and improve analytical accuracy of the economic analyses, however, they are not carried beyond the spreadsheets. To maintain a consistent analytical structure with other equipment classes the spreadsheets contain EL 5.2, and 5.3 which are equal to EL 6. Cost-efficiency relationships for these ELs are provided in Chapters 5 of the NOPR TSD.

DOE notes that the proposed regression curve and efficiency levels for the RP_VS_LF_WC equipment class were established with a limited set of data from the CAGI database. Specifically, the CAGI database included data for 13 RP_VS_LF_WC air compressors as compared to 63 for RP_FS_LF_WC compressors, and 440 for RP_FS_L_WC compressors. Chapter 5 of the NOPR TSD contains complete details on the datasets and regression methodologies.

DOE requests comment on the proposed efficiency levels selected for the RP_VS_LF_WC equipment class regarding their representation of the market, and any data that could improve the analysis. This is identified as Issue 20 in section VIII.E, "Issues on Which DOE Seeks Comment."

v. R1_FS_L_XX Efficiency Levels

The proposed efficiency levels for the R1_FS_L_XX equipment class are defined by the following equation, in conjunction with the d-values in Table IV.19.

$$\eta_{Isen\_STD\_\mathrm{R1\_FS\_L\_XX}} = (\eta_{Isen\_Regr\_\mathrm{R3\_FS\_L\_XX}} + (1 - \eta_{Isen\_Regr\_\mathrm{R3\_FS\_L\_XX}}) \times d/100)/1.091$$

Equation 17

Where:

- $\eta_{Isen\_STD\_R1\_FS\_L\_XX}$ is package isentropic efficiency for the R1_FS_L_XX equipment class, for a selected efficiency level,
- $\eta_{Isen\_Regr\_R3\_FS\_L\_XX}$ is the regression curve package isentropic efficiency for the R3_FS_L_XX equipment class, and
- d is the d-value for each proposed efficiency level, as specified in Table IV.19.

TABLE IV.19—EFFICIENCY LEVELS ANALYZED FOR RECIPROCATING, LUBRICATED, AIR-COOLED OR WATER-COOLED, FIXED-SPEED, SINGLE-PHASE

Efficiency level *	d-Value
Baseline	−18
EL 1	−15
EL 2	−5
EL 3	0
EL 4	5
EL 5	20
EL 6	60

* DOE notes that in this NOPR, the spreadsheets for the downstream economic analyses contain 4 auxiliary efficiency levels, beyond the primary efficiency levels listed in this table; these are EL 4.1, 5.1, 5.2, and 5.3. These auxiliary efficiency levels were maintained in the spreadsheets to increase the granularity and improve analytical accuracy of the economic analyses, however, they are not carried beyond the spreadsheets. Cost-efficiency relationships for these ELs are provided in Chapters 5 of the NOPR TSD.

DOE requests comment and supporting data on the proposed efficiency levels established for the R1_FS_L_XX equipment class. This is identified as Issue 21 in section VIII.E, "Issues on Which DOE Seeks Comment."

6. Manufacturer Selling Price

This section presents the MSP-efficiency relationship for each equipment class and discusses the analytical methods used to develop these relationships. For all equipment classes, DOE defines MSP by a mathematical relationship between full-load actual volume flow rate and package isentropic efficiency. However, for the purposes of DOE's analysis, package isentropic efficiency is represented indirectly through the use of a d-value. For a complete discussion of the d-value, please refer to section IV.C.5.

DOE pursued different analytical methods to find the MSP-efficiency relationships for different equipment classes. These analytical methods can be grouped into four general categories, as presented in Table IV.20.

TABLE IV.20—MANUFACTURER SELLING PRICE ANALYTICAL METHODS

Method	Applicable equipment classes
Direct Scaling from Lot 31	RP_FS_L_AC RP_VS_L_AC
Scaling with U.S. MSP Data.	RP_FS_LF_AC RP_VS_LF_AC
MSPs for Water-Cooled Equipment.	RP_FS_L_WC RP_VS_L_WC RP_FS_LF_WC RP_VS_LF_WC
New Relationships from U.S. Data.	R3_FS_L_XX R1_FS_L_XX

Jenny commented that pricing information that is publicly available may not be accurate or contain consistent information between manufacturers. Specifically, key pricing and costing information such as labor may be inconsistent because manufacturers operate in different countries with different costs of labor. (Jenny, No. 0005 at p. 4)

DOE's analysis includes MSP information gathered from a variety of sources. These sources include publicly available data as well as confidential manufacturer data collected by a DOE contractor. Data collected under non-disclosure agreement was vetted by DOE's contractor for accuracy and consistency between manufacturers. DOE used all available datasets to establish MSP-efficiency relationships for each equipment class. The following sections present the analytical methods DOE applied to each equipment class to develop an MSP-efficiency relationship.

a. Direct Scaling From Lot 31

When possible, DOE used the Lot 31 study's MSP-Flow-Efficiency Relationships as a starting point to construct analogous MSP-Flow-Efficiency Relationships for U.S. equipment. To do so, DOE scaled Lot 31 MSP-Flow-Efficiency Relationships with analogous equipment classes (*i.e.*, RP_FS_L_AC, and RP_VS_L_AC) using confidential, U.S. MSP data. Specifically, DOE scaled the Lot 31 study's absolute equipment MSPs to a magnitude that represents MSPs offered in the U.S. market. Although MSP magnitudes were scaled, DOE maintained the incremental MSP trends established in the Lot 31 study. Chapter 5 of the NOPR TSD provides details on the calculation of MSP for each rotary equipment class.

DOE requests comment on the use of Lot 31 MSP-Flow-Efficiency Relationships to develop MSP-flow-efficiency relationships for the proposed RP_FS_L_AC and RP_VS_L_AC equipment classes. This is identified as Issue 22 in section VIII.E, "Issues on Which DOE Seeks Comment."

i. RP_FS_L_AC MSP-Flow-Efficiency Relationship

The MSP-flow-efficiency relationship for the RP_FS_L_AC equipment class is as follows:

$$MSP_{\mathrm{RP\_FS\_L\_AC}} = 0.820 \times \left[(4.72 \times V_1 + 2500) + (136.88 \times V_1 + 10000) \times {\eta_{Isen\_STD\_\mathrm{RP\_FS\_L\_AC}}}^{3}\right]$$

Equation 18

Where:

- *MSP*$_{\mathrm{RP\_FS\_L\_AC}}$ is the manufacturer selling price for the RP_FS_L_AC at a selected efficiency level and full-load actual volume flow rate,
- $\eta_{Isen\_STD\_\mathrm{RP\_FS\_L\_AC}}$ is package isentropic efficiency for the RP_FS_L_AC equipment class, for a selected efficiency level and full-load actual volume flow rate, and
- V_1 is full-load actual volume flow rate (cubic feet per minute).

MSP for each efficiency level for the RP_FS_L_AC equipment class is presented in Table IV.21 at representative full-load actual volume flow rates.

TABLE IV.21—REPRESENTATIVE MSPS FOR THE RP_FS_L_AC EQUIPMENT CLASS

Full-load actual volume flow rate (acfm)	Baseline	EL 1	EL 2	EL 3	EL 4	EL 5	EL 6
10	$2,166	$2,351	$2,618	$3,024	$3,195	$3,510	$4,368
20	2,437	2,784	3,192	3,742	3,960	4,349	5,349
50	3,350	4,007	4,680	5,506	5,818	6,357	7,677
100	4,975	6,039	7,063	8,264	8,707	9,460	11,257
200	8,517	10,319	11,983	13,877	14,562	15,716	18,414
500	20,350	24,243	27,719	31,572	32,943	35,230	40,484
1000	41,492	48,764	55,158	62,159	64,633	68,739	78,091
2000	84,566	98,510	110,668	123,888	128,539	136,240	153,696
5000	208,211	242,244	271,856	304,004	315,302	333,997	376,324

ii. RP_VS_L_AC MSP-Flow-Efficiency Relationship

The MSP-flow-efficiency relationship for the RP_VS_L_AC equipment class is as follows:

$$MSP_{\text{RP\_VS\_L\_AC}} = 1.302 \times \left[(4.72 \times V_1 + 2500) + (136.88 \times V_1 + 10000) \times \eta_{Isen\_STD\_\text{RP\_VS\_L\_AC}}{}^{3} \right]$$

Equation 19

Where:

- $MSP_{RP\_VS\_L\_AC}$ is the manufacturer selling price for the RP_VS_L_AC at a selected efficiency level and full-load actual volume flow rate,
- $\eta_{Isen\_STD\_RP\_VS\_L\_AC}$ is package isentropic efficiency for the RP_VS_L_AC equipment class, for a selected efficiency level and full-load actual volume flow rate, and
- V_1 is full-load actual volume flow rate (cubic feet per minute).

MSP for each efficiency level for the RP_VS_L_AC equipment class is presented in Table IV.22 at representative full-load actual volume flow rates.

TABLE IV.22—REPRESENTATIVE MSPS FOR THE RP_VS_L_AC EQUIPMENT CLASS

Full-load actual volume flow rate (acfm)	Baseline	EL 1	EL 2	EL 3	EL 4	EL 5	EL 6
10	$3,330	$3,386	$3,514	$3,742	$3,904	$4,340	$5,587
20	3,606	3,818	4,131	4,565	4,834	5,488	7,109
50	4,935	5,474	6,139	6,943	7,401	8,437	10,743
100	7,577	8,526	9,624	10,883	11,576	13,097	16,314
200	13,526	15,189	17,044	19,101	20,209	22,590	27,461
500	33,464	37,092	41,031	45,292	47,548	52,317	61,802
1000	68,234	75,013	82,293	90,093	94,193	102,806	119,743
2000	135,819	148,853	162,796	177,678	185,481	201,831	233,842
5000	312,284	344,330	378,745	415,616	434,998	475,708	555,762

b. Scaling With U.S. MSP Data

For rotary equipment classes with no Lot 31 study analogues (*i.e.*, RP_FS_LF_AC and RP_VS_LF_AC), DOE used confidential, U.S. MSP data from representative lubricant-free units to scale the lubricated MSP-flow-efficiency relationship, presented in section I.A.1.a, to represent the U.S. lubricant-free MSP-flow-efficiency relationship.

i. RP_FS_LF_AC MSP-Flow-Efficiency Relationship

DOE used MSP data from equipment of the same full-load actual volume flow rate and d-value to scale the RP_FS_L_AC MSP-flow-efficiency relationship to a new RP_FS_LF_AC MSP-flow-efficiency relationship. The new relationship resulted in significantly larger absolute MSP for RP_FS_LF_AC, as compared to RP_FS_L_AC. The new relationship also resulted in significantly larger incremental MSP for RP_FS_LF_AC, as compared to RP_FS_L_AC. Equation 20 provides the mathematical relationship between RP_FS_L_AC and RP_FS_LF_AC MSP for a given d-value and full-load actual volume flow rate. Chapter 5 of the NOPR TSD provides details on the calculation of MSP for each rotary equipment class.

DOE requests comment on the methods used to develop RP_FS_LF_AC (lubricant-free) incremental MSP. Specifically, DOE requests comment on the use of RP_FS_L_AC (lubricated) incremental MSP relationship to develop a lubricant-free incremental MSP relationship. This is identified as Issue 23 in section VIII.E, "Issues on Which DOE Seeks Comment."

The MSP relationship for the RP_FS_LF_AC equipment class is as follows:

$$MSP_{\text{RP\_FS\_LF\_AC}} = 1.410 \times MSP_{\text{RP\_FS\_L\_AC}} + 33630$$

Equation 20

Where:

- $MSP_{RP\_FS\_LF\_AC}$ is the manufacturer selling price for the RP_FS_LF_AC at a selected d-value and full-load actual volume flow rate, and
- $MSP_{RP\_FS\_L\_AC}$ is the manufacturer selling price for the RP_FS_L_AC at the same d-value and full-load actual volume flow rate.

MSP for each efficiency level for the RP_FS_LF_AC equipment class is presented in Table IV.25 at representative full-load actual volume flow rates.

TABLE IV.23—REPRESENTATIVE MSPS FOR THE RP_FS_LF_AC EQUIPMENT CLASS

Full-load actual volume flow rate (acfm)	Baseline	EL 1	EL 2	EL 3	EL 4	EL 5	EL 6
10	$37,453	$37,488	$37,678	$37,893	$38,010	$38,265	$38,403
20	38,316	38,365	38,623	38,905	39,055	39,376	39,547
50	40,516	40,591	40,978	41,392	41,608	42,061	42,298
100	44,013	44,122	44,686	45,280	45,588	46,227	46,558
200	51,202	51,376	52,265	53,193	53,671	54,656	55,163
500	74,101	74,456	76,266	78,137	79,095	81,060	82,066
1000	113,933	114,580	117,869	121,256	122,987	126,523	128,330
2000	194,459	195,681	201,892	208,275	211,531	218,175	221,563
5000	428,595	431,568	446,672	462,185	470,096	486,231	494,456

DOE requests comment and supporting data on the MSPs established for the RP_FS_LF_AC equipment class. This is identified as Issue 24 in section VIII.E, "Issues on Which DOE Seeks Comment."

ii. RP_VS_LF_AC MSP-Flow-Efficiency Relationship

As with RP_FS_LF_AC, DOE used MSP data from equipment of the same full-load actual volume flow rate and d-value to scale the RP_VS_L_AC MSP-flow-efficiency relationship to a new RP_VS_LF_AC MSP-flow-efficiency relationship. The new relationship resulted in significantly larger absolute MSP for RP_VS_LF_AC, as compared to RP_VS_L_AC. The new relationship also resulted in significantly larger incremental MSP for RP_VS_LF_AC, as compared to RP_VS_L_AC. Equation 21 provides the mathematical relationship between RP_VS_L_AC and RP_FS_VF_AC MSP, for a given d-value and full-load actual volume flow rate. Chapter 5 of the NOPR TSD provides details on the calculation of MSP for each rotary equipment class.

DOE requests comment on the methods used to develop RP_VS_LF_AC (lubricant-free) incremental MSP. Specifically, DOE requests comment on the use of RP_VS_L_AC (lubricated) incremental MSP relationship to develop a lubricant-free incremental MSP relationship. This is identified as Issue 25 in section VIII.E, "Issues on Which DOE Seeks Comment."

The MSP relationship for the RP_VS_LF_AC equipment class is as follows:

$$MSP_{\mathrm{RP\_VS\_LF\_AC}} = MSP_{\mathrm{RP\_FS\_LF\_AC}} + 26.7 \times V_1 + 98.7$$

Equation 21

Where:

- $MSP_{RP\_VS\_LF\_AC}$ is the manufacturer selling price for the RP_VS_LF_AC at a selected d-value and full-load actual volume flow rate,
- $MSP_{RP\_FS\_LF\_AC}$ is the manufacturer selling price for the RP_FS_LF_AC at the same d-value and full-load actual volume flow rate, and
- V_1 is full-load actual volume flow rate (cubic feet per minute).

MSP for each efficiency level for the RP_VS_LF_AC equipment class is presented in Table IV.24 at representative full-load actual volume flow rates.

TABLE IV.24—REPRESENTATIVE MSPS FOR THE RP_VS_LF_AC EQUIPMENT CLASS

Full-load actual volume flow rate (acfm)	Baseline	EL 1	EL 2	EL 3	EL 4	EL 5	EL 6
10	$37,751	$37,854	$38,044	$38,259	$38,376	$38,631	$38,944
20	38,854	38,998	39,255	39,538	39,688	40,009	40,393
50	41,804	42,025	42,412	42,826	43,042	43,495	44,025
100	46,567	46,892	47,456	48,050	48,358	48,996	49,735
200	56,300	56,816	57,706	58,633	59,111	60,096	61,225
500	86,851	87,908	89,718	91,589	92,548	94,512	96,747
1000	139,459	141,386	144,676	148,063	149,794	153,330	157,338
2000	245,550	249,196	255,407	261,790	265,046	271,690	279,202
5000	556,337	565,206	580,311	595,824	603,735	619,870	638,105

DOE requests comment and supporting data on the MSPs established for the RP_VS_LF_AC equipment class. This is identified as Issue 26 in section VIII.E, "Issues on Which DOE Seeks Comment."

c. MSPs for Water-Cooled Equipment

As discussed in section IV.C.5.c, many air-cooled rotary air compressors are also offered in a water-cooled variant. These variants are typically identical, except for the cooling method employed. The air-cooled variant will utilize one or more cooling fans and heat exchangers to remove heat from the compressed air. Alternatively, a water-cooled variant utilizes chilled water (from a separate chilled water system) and one or more heat exchanges to remove heat from the compressed air. As such, the MSP of analogous air- and water-cooled equipment, not factoring in the cooling system, is expected to be equivalent. Furthermore, DOE expects that any difference in incremental MSP between air- and water-cooled systems will not be significant, when compared to the incremental MSP of the greater package. Consequently, DOE concluded that the incremental cost and price of efficiency will be the same for both air-cooled and water-cooled equipment classes at each efficiency level. Thus, DOE did not develop unique MSP-flow-efficiency relationships for water-cooled equipment classes.

Specifically, for all water-cooled equipment classes, DOE used incremental MSPs equivalent to analogous air-cooled equipment classes.

DOE requests comment on the use of incremental MSP for air-cooled equipment classes to represent incremental MSP for water-cooled equipment classes. This is identified as Issue 27 in section VIII.E, "Issues on Which DOE Seeks Comment."

d. New Relationships From U.S. Data

As discussed in section IV.C.5.a, DOE compared the Lot 31 study MSP-Flow-Efficiency Relationship for three-phase reciprocating air compressors to U.S. equipment data and concluded that the Lot 31 study relationship was not representative of the U.S. market. Consequently, DOE used the online retailer price database and confidential U.S. MSP data from representative units to establish a new relationship between MSP, d-value, and full-load actual volume flow rate for three-phase reciprocating air compressors. Chapter 5 of the NOPR TSD provides additional information on the calculation of MSP for each reciprocating equipment class.

i. R3_FS_L_XX MSP-Flow-Efficiency Relationship

The MSP-Flow-Efficiency Relationship for the R3_FS_L_XX equipment class is as follows:

$$MSP_{\text{R3\_FS\_L\_XX}} = 175.51 \times \left(V_1{}^{0.751}\right) \times (0.015 \times d + 1)$$

Equation 22

Where:

- $MSP_{\text{R3\_FS\_L\_XX}}$ is the manufacturer selling price for the R3_FS_L_XX at a selected efficiency level,
- V_1 is full-load actual volume flow rate (cubic feet per minute), and
- d is the d-value for each efficiency level.

MSP for each efficiency level for the R3_FS_L_XX equipment class is presented in Table IV.25 at representative full-load actual volume flow rates.

TABLE IV.25—REPRESENTATIVE MSPS FOR THE R3_FS_L_XX EQUIPMENT CLASS

Full-load actual volume flow rate (acfm)	Baseline	EL 1	EL 2	EL 3	EL 4	EL 5	EL 6
5	$429	$456	$544	$588	$632	$764	$1,117
10	722	767	915	989	1,063	1,286	1,880
25	1,437	1,526	1,821	1,969	2,116	2,559	3,740
50	2,419	2,568	3,065	3,313	3,562	4,307	6,295
75	3,279	3,482	4,155	4,492	4,829	5,840	8,535
100	4,070	4,321	5,158	5,576	5,994	7,248	10,594

DOE requests comment and supporting data on the MSPs established for the R3_FS_L_XX equipment class. This is identified as Issue 28 in section VIII.E, "Issues on Which DOE Seeks Comment."

ii. R1_FS_L_XX MSP-Flow-Efficiency Relationship

As discussed in section IV.C.5.c, many reciprocating air compressors with motor power ≤7.5-hp are offered with both single- and three-phase induction motors. These variants are typically identical, except for the motor. Consequently, the MSP of analogous single- and three-phase equipment, not factoring the motor price, is expected to be equivalent. Furthermore, DOE expects that any difference in incremental MSP between single- and three-phase motors will not be significant when compared to the incremental MSP of the greater package. Consequently, DOE concluded that the incremental cost and price of efficiency will be the same for single- and three-phase equipment classes at each efficiency level. DOE notes that the efficiency levels for single- and three-phase equipment are defined by the same d-values, but are scaled to account for the inherent differences in attainable efficiency between single- and three-phase equipment.

Specifically, DOE used the MSPs for the R3_FS_L_XX equipment class to directly represent the MSPs for the R1_FS_L_XX equipment class. This means that the incremental cost to move from one d-value (or efficiency level) to another, is identical between single- and three-phase units of the same full-load actual volume flow rate.

The MSP relationship for the R1_FS_L_XX equipment class is identical to the equation for the R3_FS_L_XX equipment class, and is as follows:

$$MSP_{\text{R1\_FS\_L\_XX}} = 175.51 \times \left(V_1{}^{0.751}\right) \times (0.015 \times d + 1)$$

Equation 23

Where:

- $MSP_{\text{R1\_FS\_L\_XX}}$ is the manufacturer selling price for the R1_FS_L_XX at a selected efficiency level,
- V_1 is full-load actual volume flow rate (cubic feet per minute), and
- d is the d-value for each efficiency level.

MSP for each efficiency level for the R1_FS_L_XX equipment class at representative full-load actual volume flow rates is equivalent to the MSPs in

Table IV.25 for the R3_FS_L_XX equipment class.

DOE requests comment on the use of incremental MSP for the R3_FS_L_XX equipment classes to represent incremental MSP for the R1_FS_L_XX equipment classes. This is identified as Issue 29 in section VIII.E, “Issues on Which DOE Seeks Comment.”

7. Manufacturer Production Cost

As discussed in the previous section, DOE developed MSP-flow-efficiency relationships for each equipment class. However, certain downstream analyses, such as the MIA, require DOE to also assess the relationship between manufacturer production costs (MPCs), flow, and efficiency. To determine the MPC-flow-efficiency relationship, DOE backed out manufacturer markups from each MSP-flow-efficiency relationship. The manufacturer markup is defined as the ratio of MSP to MPC and covers non-production costs such as selling, general and administrative expenses (SG&A); research and development expenses (R&D), interest expenses, and profit. DOE developed estimates of manufacturer markups based on confidential data obtained during confidential manufacturer interviews. DOE's estimates of markups are presented in Table IV.26.

TABLE IV.26—BASELINE MARKUP ESTIMATES

Equipment class	Markup
RP_FS_L_AC	1.35
RP_VS_L_AC RP_FS_L_WC RP_VS_L_WC RP_FS_LF_AC RP_VS_LF_AC RP_FS_LF_WC RP_VS_LF_WC	1.40
R3_FS_L_XX R1_FS_L_XX	1.26

The MIA also requires MPCs to be disaggregated the MPCs into material, labor, depreciation, and overhead costs. DOE estimated MPC breakdowns based on information gathered from consultants familiar with the compressor manufacturing industry. Table IV.27 presents DOE's estimates for material, labor, depreciation, and overhead breakdown.

TABLE IV.27—BREAKDOWN OF MPC FOR COMPRESSORS

Category	Percentage of total MPC
Materials	53.8
Labor	23.1
Depreciation	4.1
Overhead	19.0

DOE requests comment on its estimates for manufacturer markups, as well as material, labor, depreciation, and overhead breakdowns. This is identified as Issue 30 in section VIII.E, “Issues on Which DOE Seeks Comment.”

8. Other Analytical Outputs

In the engineering analysis DOE calculated values for full-load power and no load power for use in cost-benefit calculations for individual end users, manufacturers, and the Nation. Full-load power was calculated for each equipment classes using the formula proposed for package isentropic efficiency in the test procedure NOPR and the outputs of efficiency, full-load actual volume flow rate, and pressure from the engineering analysis. DOE used the CAGI database to establish a relationship and calculate values for no load power based on full-load power. Chapter 5 of the NOPR TSD provides additional information on these outputs.

D. Markups Analysis

The markups analysis develops appropriate markups (*e.g.*, retailer markups, distributor markups, contractor markups) in the distribution chain and sales taxes to convert the MSP estimates derived in the engineering analysis to end user prices, which are then used in the LCC and PBP analysis and in the manufacturer impact analysis. At each step in the distribution channel, companies mark up the price of the equipment to cover business costs and profit margin. For compressors, the main distribution channels are (1) manufacturers directly to end-users, (2) manufacturers to distributors to end-users, (3) manufacturers to contractors to end-users, and (4) manufacturers to end-users through other means. Table IV.28 shows the estimated market shares of each channel, based on air equipment type and capacity.

TABLE IV.28—COMPRESSORS DISTRIBUTION CHAIN

Channel structure				Rotary		Reciprocating	
				<500 ACFM (%)	≥500 ACFM (%)	<100 ACFM (%)	≥100 ACFM (%)
Manufacturer			User	7.5	20.0	5.0	20.0
Manufacturer	Distributor/Manufacturer Rep		User	85.0	77.5	75.0	75.0
Manufacturer	Distributor/Manufacturer Rep	Contractor	User	5.0	2.5	15.0	5.0
Manufacturer	Other		User	2.5	0.0	5.0	0.0
Total				100	100	100	100

DOE developed separate markups for baseline equipment (baseline markups) and for the incremental cost of more-efficient equipment (incremental markups). Incremental markups are coefficients that relate the change in the MSP of higher-efficiency models to the change in the retailer sales price.

To develop markups for the parties involved in the distribution of the equipment, DOE utilized several sources, including: (1) The U.S. Census Bureau 2007 *Economic Census Manufacturing Industry Series* (NAICS 33 Series)[60] to develop original equipment manufacturer markups; (2) the U.S. Census Bureau 2012 *Annual Wholesale Trade Survey,* Machinery,

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[60] U.S. Census Bureau (2007). Economic Census Manufacturing Industry Series (NAICS 33 Series). *http://www.census.gov/manufacturing/asm.*

Equipment, and Supplies Merchant Wholesalers[61] to develop distributor markups; and (3) 2013 RS Means Electrical Cost Data[62] to develop mechanical contractor markups.

In addition to the markups, DOE derived State and local taxes from data provided by the Sales Tax Clearinghouse. These data represent weighted-average taxes that include county and city rates. DOE derived shipment-weighted-average tax values for each region considered in the analysis.

Chapter 6 of the NOPR TSD provides details on DOE's development of markups for compressors.

Because the identified market channels are complex and their characterization required a number of assumptions, DOE seeks input on its analysis of market channels listed above in Table IV.28, particularly related to whether the channels include all necessary intermediate steps, and the estimated market share of each channel. This is identified as Issue 31 in section VIII.E, "Issues on Which DOE Seeks Comment."

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of air compressors at different efficiencies in representative U.S. manufacturing and commercial facilities, and to assess the energy savings potential of increased air compressor efficiency. The energy use analysis estimates the range of energy use of air compressors in the field (*i.e.*, as they are actually used by end users). The energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in end user operating costs that could result from adoption of new standards.

Annual energy use of air compressors depends on the utilization of the equipment, which is influenced by air compressor application, annual hours of operation, load profiles, capacity controls, and compressor sizing. The annual energy use is calculated as the sum of input power at each load point multiplied by the annual operating hours at each respective load point.

1. Applications

DOE found that air compressors operate in response to system demands in three general ways, which were classified as applications. DOE determined these applications after examining available field assessment data from two database sources: (1) A database of motor nameplate and field data compiled by the Washington State University (WSU) Extension Energy Program, Applied Proactive Technologies (APT), and New York State Energy Research and Development Authority (NYSERDA) ("WSU/NYSERDA database")[63] and (2) the Northwest Industrial Motor Database.[64] Based on the distribution of compressor-specific assessments found in these databases, DOE defined three application types to capture variations in air demand and control strategies. The three applications types are defined as:

Trim: Compressors equipped with controls configured to serve fluctuating air demand. The trim application is used to represent either the operation of an individual compressor, or a compressor within a compressor plant, that serves the fluctuating portion of the demand.

Base load: Compressors equipped with controls configured to serve steady-state air demands. The base-load application is used to represent a compressor within a compressor plant that serves the constant portion of fluctuating demand, while the remaining fluctuating portion of demand is covered by a trim application.[65]

Intermittent: Compressors equipped with controls configured to serve sporadic loads. For example, these could be operated as back-up compressors for either base-load or trim compressors, or as a dedicated air compressor to a specific process such as sand blasting or fermentation.

Table IV.29 shows the distribution of air compressor application for both rotary and reciprocating air compressors. DOE seeks comment on its distribution of air compressors application. This is identified as Issue 32 in section VIII.E, "Issues on Which DOE Seeks Comment."

TABLE IV. 29—DISTRIBUTION OF AIR COMPRESSORS BY APPLICATION

Application	Probability (%)
Trim	50
Base-load	28
Intermittent	22

2. Annual Hours of Operation

DOE constructed a probability distribution of average annual hours of operation for each of the three application types based on NYSEDA and WSU system assessments data discussed previously and Ecodesign Preparatory Study on Electric motor systems/Compressors (Lot 31 Study).[66]

Table IV.30 shows the distribution of annual hours of operation for each application by equipment type, where each row is the probability of a compressor's annual operating hours when operated at a specific application.

TABLE IV. 30—DISTRIBUTION OF ANNUAL HOURS OF OPERATION BY APPLICATION

Probability* (%)	Rotary			Reciprocating		
	Base-load	Trim	Intermittent	Base-load	Trim	Intermittent
0	4,000	2,000	1,000	1,100	650	150
20	6,552	6,552	3,876	1,198	708	202
40	7,446	7,446	4,400	1,361	804	338
60	8,400	8,400	5,928	1,535	1,083	368
80	8,400	8,400	8,064	1,601	1,474	395

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[61] U.S. Census Bureau (2012). Annual Wholesale Trade Survey, Machinery, Equipment, and Supplies Merchant Wholesalers (NAICS 4238). *http://www.census.gov/wholesale/index.html.*

[62] RS Means (2013), Electrical Cost Data, 36th Annual Edition (Available at: *http://www.rsmeans.com*).

[63] The motors database is composed of information gathered by WSU and APT during 123 industrial motor surveys or assessments: 11 motor assessments were conducted between 2005 and 2011 and occurred in industrial plants; 112 industrial motor surveys were conducted between 2005 and 2011 and were funded by NYSERDA and conducted in New York State.

[64] Northwest Industrial Motor Database Summary, 2009, Strategic Energy Group.

[65] Air demand (in cfm)) can vary considerably during plant operations. A portion of this air demand may be steady-state, driving equipment that is run constantly, while the remaining portion may be fluctuating.

[66] *Ecodesign Preparatory Study on Electric Motor Systems/Compressors;* 2014; Prepared for the European Commission by Van Holsteijn en Kemna B.V. (VHK); ENER/C3/413–2010–LOT 31–SI2.612161; *http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0040-0031.*

TABLE IV. 30—DISTRIBUTION OF ANNUAL HOURS OF OPERATION BY APPLICATION—Continued

Probability* (%)	Rotary			Reciprocating		
	Base-load	Trim	Intermittent	Base-load	Trim	Intermittent
100	8,400	8,400	8,400	1,601	1,601	731

* DOE assumes a uniform distribution between the listed values.

DOE requests comment and information on average annual operating hours for the compressor types and applications in the scope of this rulemaking. This is identified as Issue 33 in section VIII.E, "Issues on Which DOE Seeks Comment."

3. Load Profiles

Information on typical load profiles for compressors is not available in the public domain. DOE reviewed resources provided by stakeholders, as well as sample compressed air system assessments of commercial and industrial customers. Given the lack of data, DOE developed several load profiles based on how typical compressor applications would likely be employed in the field. Each compressor load profile is approximated by weights that specify the percentage of time the compressor operates at one of four load points: 20, 40, 70, and 100 percent of its duty point airflow.[67] Load profiles are then mapped to each application type to capture compressor operation in the field; this mapping is shown in Table IV.32. The four load profile types are described below:

Flat-load profile: Represents a constant maximum airflow demand. All annual hours of operation are assigned to the duty point airflow. The flat-load profile is used for most base-load applications, and for intermittent applications to represent the event where a intermittent compressor is operating in a base-load role. It can also represent a situation where intermittent demand has been attenuated due to the inclusion of appropriately-sized secondary (demand) air receiver storage to the compressed air system.

High-load profile: Represents a high fraction of annual operating hours spent at, or near the maximum airflow demand. The annual hours of operation are distributed across the higher airflow load points. The high-load profile is used to represent most trim applications, and some base-load applications.

Low-load profile: Represents a low fraction of annual operating hours spent at maximum air flow. Annual hours of operation are distributed across the lower airflow load points. Low-load profile, although undesirable, occurs if a single compressor is supplying airflow to a range of tools, with only a small fraction of operating hours at which all of these tools are operating. This profile is also used with both trim and intermittent applications.

Even-load profile: Represents an even distribution of annual operating hours spent at each airflow load point. This load profile is a characteristic of trim or intermittent applications. Table IV.31 shows the percentage of annual operating hours at each of the load points described above for the four load profiles. Table IV.32 shows the assumed probability of each type of load profile being selected for each application type.

TABLE IV. 31—FRACTION OF ANNUAL OPERATING HOURS (%) AS A FRACTION OF RATED AIRFLOW

Load point (%)	Load profile			
	Flat (%)	High (%)	Low (%)	Even (%)
20	0	0	30	0
40	0	10	30	33.3
70	0	40	30	33.3
100	100	50	10	33.3

TABLE IV. 32—DISTRIBUTION OF LOAD PROFILES BY APPLICATION

Application	Load profile	Load profile probability
Trim	Flat.	
	Even	40
	Low	40
	High	20
Base-load	Flat	80
	Even.	
	Low.	
	High	20
Intermittent	Flat	30
	Even	20
	Low	20
	High	30

DOE requests comment and information on typical load profiles for the air compressor types and applications in the scope of this rulemaking. This is identified as Issue 34 in section VIII.E, "Issues on Which DOE Seeks Comment."

4. Capacity Control Strategies

Facility demands for compressed air rarely match a compressor's rated air capacity. To account for this discrepancy, some form of compressed air control strategy is necessary. Some forms of capacity control only apply to certain compressor designs and are effective over a limited range of a compressor's capacity. In addition, some capacity controls can be used in combination. As the capacity is regulated, the power required for the compressor to meet the airflow demand will change depending on the chosen control strategy. Chapter 7 of the NOPR TSD describes the implemented control in detail with mathematical models for each of the following control strategies: Start/Stop, Load/Unload (2-step), Inlet Valve Modulation, Variable Displacement, and Multi-step. DOE also included the following combined control strategies: Inlet Valve Modulation/Unload, Variable Displacement/Unload, and Multi-step/Unload. DOE modeled these control strategies largely on the following sources: Analysis Methodology Manual for AIRMaster Compressed Air System Audit and Analysis Software,[68] CAGI's Compressed Air and Gas Handbook,[69] and Compressed Air System Controls.[70]

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[67] DOE assumes that 20-percent is the lowest point at which a compressor will operate before being cycled by capacity controls into its Stop or Unload status. See chapter 7 of the TSD for more information on capacity controls.

5. Compressor Sizing

In the Framework Document, DOE requested information on compressor sizing. CAGI noted that demand of operation dictates whether an installed system is adequate, inadequate, or oversized, but was unsure whether there are data available as to the number of systems that may be potentially oversized at the point of sale. (CAGI, No. 0014 at p. 210) Kaeser commented that they often see oversizing—specifically multiple units running at varying part-load levels. Kaeser stated that this is more of an issue of how compressors are controlled. (Kaeser Compressors, No. 0014 at p. 212–213) DOE was unable to find any information quantifying the degree of oversizing at the point of sale. In addition, DOE was unable to find information quantifying the frequency that compressors are misconfigured or oversized in the field, so DOE assumed that compressors were perfectly sized for this analysis.

DOE seeks data on the degree that compressors are over- or under-sized for an intended application. Specifically, DOE requests data on the degree that air compressors are operated at duty points other than their intended design point. This is identified as Issue 35 in section VIII.E, "Issues on Which DOE Seeks Comment."

Additionally, Scales commented that air compressors are often set to operate at an elevated pressure, which increases input power as well as compressed air output. (W. Scales, No. 0020 at p. 1) DOE was unable to find any information quantifying the impacts of operating air compressors at pressures other than at their specified design point. DOE requests information and data on the degree that a compressor's pressure can be set above or below its design point. Additionally, DOE requests information and data on air compressor efficiency when it is operated above the design point pressure. This is identified as Issue 36 in section VIII.E, "Issues on Which DOE Seeks Comment."

Chapter 7 of the NOPR TSD provides details on DOE's energy use analysis for air compressors.

F. Life-Cycle Cost and Payback Period Analysis

DOE conducted LCC and PBP analyses to evaluate the economic impacts on individual end users of potential energy conservation standards for air compressors. The effect of new or amended energy conservation standards on individual end users usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure end-user impacts:

- The LCC (life-cycle cost) is the total end user expense of an appliance or equipment over the life of that equipment, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the equipment.
- The PBP (payback period) is the estimated amount of time (in years) it takes end users to recover the increased purchase cost (including installation) of more-efficient equipment through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

For any given efficiency level, DOE measures the change in LCC relative to the LCC in the no-standards case, which reflects the estimated efficiency distribution of air compressors in the absence of new or amended energy conservation standards. In contrast, the PBP for a given efficiency level is measured relative to the baseline equipment.

For each considered efficiency level in each equipment class, DOE calculated the LCC and PBP for a nationally representative set of air compressors. DOE used data from NYSERDA and NW databases, Lot 31 and acquired system assessments to define each air compressor's application, load profile, annual hours or operation, and combination of employed controls.[71] [72] [73] For each of these air compressors, DOE determined the energy consumption and the appropriate electricity price, thus capturing the variability in energy consumption and energy prices associated with the use of air compressors.

Inputs to the calculation of total installed cost include equipment costs—which includes MPCs, manufacturer markups, retailer and distributor markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, equipment lifetimes, and discount rates. DOE created distributions of values for equipment lifetime, discount rates, and sales taxes, with probabilities attached to each value, to account for their uncertainty and variability.

The computer model DOE uses to calculate the LCC and PBP relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and air compressor end user sample. The model calculated the LCC and PBP for equipment at each efficiency level for 10,000 end users per simulation run.

DOE calculated the LCC and PBP for all end users as if each were to purchase a new equipment in the expected year of compliance with a new standard. DOE has tentatively determined that any standards would apply to air compressors manufactured five years after the date on which any standard is published.[74] At this time, DOE estimates publication of a final rule in the second half of 2016. Therefore, for purposes of its analysis, DOE used 2022 as the first full year of compliance with any standards for compressors.

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[68] Wheeler, G. M., Bessey, E. G. & McGill, R. D. Analysis Methodology Manual for AIRMaster Compressed Air System Audit and Analysis Software, 1997.

[69] McCulloh, D. M. Compressed Air and Gas Handbook. Compressed Air and Gas Institute (CAGI), 2003. at <*http://www.cagi.org*>.

[70] Compressed Air Challenge, U.S. DOE, Compressed Air System Controls, 1998, at <*https://www.compressedairchallenge.org/library/factsheets/factsheet06.pdf*>.

[71] Washington State University Extension Energy Program (WSU) and Applied Proactive Technologies (APT). Database of Motor Nameplate and Field Measurement Data. New York State Energy Research and Development Authority (NYSERDA) (2011).

[72] Strategic Energy Group, Northwest Industrial Motor Database Summary (2009).

[73] Van Holsteijn en Kemna B.V. (VHK). *Ecodesign Preparatory Study on Electric Motor Systems/Compressors;* 2014; Prepared for the European Commission by Van Holsteijn en Kemna B.V. (VHK); ENER/C3/413–2010–LOT 31–SI2.612161, available at *http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0040-0031.*

[74] EPCA specifies that the provisions of subsections (l) through (s) of section 42 U.S.C. 6295 shall apply to any other type of industrial equipment which the Secretary classifies as covered equipment, which includes compressors. (42 U.S.C. 6316(a)) Subsection (l)(2) of 42 U.S.C. 6295 states that any new or amended standard for any other type of consumer product which the Secretary classifies as a covered product shall not apply to products manufactured within five years after the publication of a final rule establishing such standard. DOE believes that this five-year lead time also applies to other types of industrial equipment, such as compressors.

Table IV. 33 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the NOPR TSD and its appendices.

TABLE IV. 33—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Inputs	Source/method
Equipment Cost	Derived by multiplying MPCs by manufacturer and retailer markups and sales tax, as appropriate. Used historical data to derive a price scaling index to forecast equipment costs.
Installation Costs	Baseline installation cost determined with data from stakeholders. Assumed no change with efficiency level.
Annual Energy Use	The total annual energy use multiplied by the hours per year. Average number of hours based on field data.
Energy Prices	Electricity: Marginal prices derived from EEI[75]
Energy Price Trends	Based on *AEO 2015* price forecasts.
Repair and Maintenance Costs	Assumed no change with efficiency level.
Equipment Lifetime	Assumed average life time of 12.5 years for rotary, and 8.4 for reciprocating air compressors.
Discount Rates	Approach involves identifying all possible debt or asset classes that might be used to purchase air compressors. Primary data source was the Damodaran Online.
Compliance Date	Late 2021.

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the NOPR TSD.

1. Equipment Cost

To calculate end user equipment costs, DOE multiplied the MPCs developed in the engineering analysis by the markups described in section IV.D (along with sales taxes). DOE used different markups for baseline equipment and higher-efficiency equipment because DOE applies an incremental markup to the increase in MSP associated with higher-efficiency equipment.

The markup is the percentage increase in price as the air compressor equipment passes through distribution channels. As explained in section IV.D, DOE assumed that compressors are delivered by the manufacturer through one of four distribution channels. The overall markups used in the LCC analysis are weighted averages of all of the relevant distribution channel markups.

To project an equipment price trend for the NOPR, DOE derived an inflation-adjusted index of the Producer Price Index for air and gas compressor equipment manufacturers over the period 1984–2013.[76] These data show a slight decrease from 1989 through 2004. Since 2004, however, there has been an increase in the price index. Given the relatively slow global economic activity in 2009 through 2013, the extent to which the future trend can be predicted based on the last decade is uncertain. Because the observed data do not provide a firm basis for projecting future cost trends for compressor equipment, DOE used a constant price assumption as the default trend to project future compressor prices from 2022. Thus, prices projected for the LCC and PBP analysis are equal to the 2014 values for each efficiency level in each equipment class.

DOE requests comments on the most appropriate trend to use for real (inflation-adjusted) compressor prices. This is identified as Issue 37 in section VIII.E, "Issues on Which DOE Seeks Comment."

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the equipment. In the Framework Document, DOE requested information on whether installation costs would be expected to change with efficiency. CAGI responded that there might be an added cost of installation related to efficiency (CAGI, No.0009 at p.8), but CAGI did not provide any rationale for this increase. In the absence of data to indicate at what efficiency level DOE may need to consider an increase in installation costs, or other drivers that would trigger higher installation costs for more efficient equipment, DOE has not included an estimate for installation costs for this analysis. DOE requests comment on whether any of the efficiency levels considered in this NOPR might lead to an increase in installation costs and, if so, data regarding the magnitude of the increased cost for each relevant efficiency level. This is identified as Issue 38 in section VIII.E, "Issues on Which DOE Seeks Comment."

3. Annual Energy Consumption

For each sampled compressor, DOE determined the energy consumption for an air compressor at different efficiency levels using the approach described above in section IV.E of this document.

4. Energy Prices

DOE derived average and marginal annual non-residential (commercial and industrial) electricity prices using data from EIA's Form EIA–861 database (based on "Annual Electric Power Industry Report"),[77] EEI Typical Bills and Average Rates Reports,[78] and information from utility tariffs. Electricity tariffs for non-residential end users can be very complex, with the principal difference from residential rates being the incorporation of demand charges. The presence of demand charges means that two end users with the same monthly electricity consumption may have very different bills, depending on their peak demand. For the NOPR analysis DOE used marginal electricity prices to estimate the impact of demand charges for end users of air compressors. The methodology of use to calculate the marginal electricity rates can be found in appendix 8B of the NOPR TSD.

To estimate energy prices in future years, DOE multiplied the average national energy prices by the forecast of annual change in national-average commercial and industrial energy price in the Reference case from *AEO 2015,* which has an end-year of 2040.[79] To estimate price trends after 2040, DOE used the average annual rate of change in prices from 2020 to 2040.

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[75] Edison Electric Institute (EEI), Typical Bills and Average Rates Report Summer, and Winger (2014).

[76] Series ID PCU333911333911; *http://www.bls.gov/ppi/.*

[77] Available at: *www.eia.doe.gov/cneaf/electricity/page/eia861.html.*

[78] Edison Electric Institute. *Typical Bills and Average Rates Report.* Winter 2014 published April 2014, Summer 2014 published October 2014: Washington, DC (Last accessed June 2, 2015.) *http://www.eei.org/resourcesandmedia/products/Pages/Products.aspx.*

5. Repair and Maintenance Costs

Commenting on the framework document, Kaeser stated that the cost of repair for more efficient compressors depends on whether it is fixed-speed or variable-speed, and that comparing more efficient fixed-speed to less efficient fixed-speed shows no variation in costs. (Kaeser Compressors, No. 0014 at p. 236–237) CAGI commented in response to the Framework document that VSDs can have higher repair and troubleshooting costs based on issues of cleanliness of the operating site and electrical noise/interference. (CAGI, No. 0006 at p. 8)

For this analysis DOE is considering separate equipment classes for compressors using fixed-speed drives and VSDs, so they are not considered as potential replacements for one another in the LCC analysis. Based on the comments from Kaeser, DOE does not expect repair or maintenance costs to change with increased efficiency, so DOE did not estimate either repair or maintenance costs.

6. Equipment Lifetime

DOE defines "equipment lifetime" as the age when a given air compressor is retired from service. DOE presented several average equipment lifetimes estimates in the framework document. In response, CAGI commented that well-cared-for compressors can have lifetimes spanning decades, while Kaeser commented that very old equipment exists, but some equipment may experience much shorter lifetimes. (CAGI, No. 0009 at p.8; Kaeser Compressors, No. 0014 at p. 228) CAGI further noted that there are many variables that could affect equipment lifetime, such as quality of installation, operating environment, quality of replacement parts, and qualifications of maintenance technicians. (CAGI, No. 0014 at p. 238) While no stakeholder directly commented on the lifetimes presented, Kaeser stated they were reasonable as an average over the entire market. (Kaeser Compressors, No. 0014 at p. 229)

For the NOPR, DOE based equipment lifetimes on new information published in the Lot31 study.[80] DOE calculated a distribution of lifetimes shown in Table IV.34. DOE also used a distribution of mechanical lifetime in hours to allow a negative correlation between annual operating hours and lifetime in years—air compressors with more annual operating hours tend to have shorter lifetimes. Chapter 8 of the NOPR TSD contains a detailed discussion of equipment lifetimes.

TABLE IV. 34—AIR COMPRESSOR LIFETIMES (YEARS)

	Minimum	Average	Maximum
Rotary	4	12.5	36
Reciprocating	1	8.4	25

DOE seeks comment on these minimum, average, and maximum equipment lifetimes, and whether or not they are appropriate for all equipment classes. This is identified as Issue 39 in section VIII.E, "Issues on Which DOE Seeks Comment."

7. Discount Rates

The discount rate is the rate at which future expenditures are discounted to estimate their present value. The weighted average cost of capital is commonly used to estimate the present value of cash flows to be derived from a typical company project or investment. Most companies use both debt and equity capital to fund investments, so the cost of capital is the weighted-average cost to the firm of equity and debt financing. DOE estimated the cost of equity using the capital asset pricing model, which assumes that the cost of equity for a particular company is proportional to the systematic risk faced by that company.

The primary source of data for this analysis was Damodaran Online, a widely used source of information about company debt and equity financing for most types of firms.[81] DOE estimated a separate weighted average cost of capital for each business sector that purchases compressors. More details regarding DOE's estimates of end user discount rates are provided in chapter 8 of the NOPR TSD.

8. Efficiency Distribution in the No-New-Standards Case

To accurately estimate the share of end users that would be affected by a potential energy conservation standard at a particular efficiency level, DOE's LCC analysis considered the projected distribution (*i.e.,* market shares) of equipment efficiencies that end users purchase in the no-new-standards case (*i.e.,* the case without new energy conservation standards). To estimate the efficiency distribution of air compressors for 2021, DOE examined the frequency of efficiencies made available under CAGI's voluntary testing program for each equipment class (CAGI database), and the distribution of efficiencies of shipments of commercial and industrial pumps provided,[82] scaled to the capacity range of compressors. DOE found the distribution for both samples to be similar, with the distribution of efficiencies of shipments for pumps skewed slightly toward higher efficiencies. For the NOPR analysis, DOE used the re-scaled distribution of pump efficiencies, as it is based on the efficiencies of shipments of a durable industrial product, rather than the frequency of efficiency of an entry in a catalog, and thus better reflects end user choice. The estimated market shares for the no-new-standards case efficiency distribution for air compressors are shown in Table IV.35. See chapter 8 of the NOPR TSD for further information on the derivation of the efficiency distributions.

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[79] U.S. Department of Energy-Energy Information Administration, *Annual Energy Outlook 2015 with Projections to 2040* (Available at: <*http://www.eia.gov/forecasts/aeo/*>).

[80] *Ecodesign Preparatory Study on Electric Motor Systems/Compressors;* 2014; Prepared for the European Commission by Van Holsteijn en Kemna B.V. (VHK); ENER/C3/413–2010–LOT 31–SI2.612161; *http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0040-0031.*

[81] Damodaran Online, The Data Page: Cost of Capital by Industry Sector, 2001–2013. (Last accessed March, 2014.) See: *http://pages.stern.nyu.edu/~adamodar/.*

[82] U.S. Department of Energy. Energy Efficiency and Renewable Energy Office. Energy Conservation Program: Energy Conservation Standards for Pumps; Notice of proposed rulemaking (NOPR), 2015. See: *http://www.regulations.gov/#!documentDetail;D=EERE-2011-BT-STD-0031-0040.*

TABLE IV. 35—DISTRIBUTION OF EFFICIENCIES IN THE NO-NEW-STANDARDS CASE

EL	Average of probability (%)
0	11.50
1	15.50
2	15.90
3	18.40
4	11.30
5	22.40
6	5.10

9. Payback Period Analysis

The payback period is the amount of time it takes the end user to recover the additional installed cost of more-efficient equipment, compared to baseline equipment, through energy cost savings. Payback periods are expressed in years. Payback periods that exceed the life of the equipment mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the equipment and the change in the first-year annual operating expenditures relative to the baseline. The PBP calculation uses the same inputs as the LCC analysis, except that discount rates are not needed.

As noted above, EPCA, as amended, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the end user of purchasing equipment complying with an energy conservation standard level will be less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii) and 6316(a)) For each considered efficiency level, DOE determined the value of the first year's energy savings by calculating the energy savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy price forecast for the year in which compliance with the new standards would be required.

G. Shipments Analysis

DOE uses forecasts of annual equipment shipments to calculate the national impacts of potential energy conservation standards on energy use, NPV, and future manufacturer cash flows.[83] The shipments model takes an accounting approach, tracking market shares of each equipment class and the vintage of units in the stock. Stock accounting uses equipment shipments as inputs to estimate the age distribution of in-service equipment stocks for all years. The age distribution of in-service equipment stocks is a key input to calculations of both the NES and NPV, because operating costs for any year depend on the age distribution of the stock.

In its proposed Coverage Determination and subsequent Framework Document, DOE considered using the shipment data available from the U.S. Census Bureau. In reference to the shipments found in the Census data, CAGI commented that air compressors used for actual commercial and industrial applications are significantly lower, being a fraction of the referenced number (CAGI, EERE–2012–BT–DET–0033–0003, pg. 7). In response, DOE sought, and received, recent shipments data for rotary compressors from a number of stakeholders and subject matter experts. DOE was able to find only limited shipments data for reciprocating compressors, so DOE continued to use the data from the U.S. Census Bureau.[84] DOE aggregated these data into its shipments estimate for 2013 (see chapter 9 of the NOPR TSD).

DOE seeks comment on the total 2013 shipments by equipment class. This is identified as Issue 40 in section VIII.E, "Issues on Which DOE Seeks Comment."

The 2013 shipments estimates were disaggregated by compressor capacity in actual cubic feet per minute (ACFM). To project future shipments of air compressors, DOE scaled the 2013 values using particular forecasts from *AEO 2015*. DOE understands that air compressors are used widely in both commercial, and manufacturing and industrial sectors. However, DOE was not able to locate and information indication what fraction of equipment was used in either sector. For this analysis DOE assumed that industrial/manufacturing processes will require a greater volume of compressed air than commercial processes. With higher electrical loads in the industrial/manufacturing sector than the commercial sector, DOE assumed that compressors greater than 50 ACFM capacity are mainly used in manufacturing, so DOE used the forecast for value of manufacturing shipments for this category. DOE assumed compressors equal to or less than 50 ACFM capacity are mainly used in commercial buildings, so DOE used the forecast for commercial floor space for this category.

DOE seeks comment on its assumption that air compressors with a capacity of no more than 50 ACFM are used in commercial applications, and air compressors greater than 50 ACFM are used in industrial applications. This is identified as Issue 41 in section VIII.E, "Issues on Which DOE Seeks Comment."

For rotary equipment classes DOE then used CAGI test data for air compressors collected directly from manufacturers to distribute shipments into the different lubrication and cooling type equipment classes. For reciprocating compressors DOE was unable to locate any information on the fractions of equipment shipped that are single-phase or three-phase. DOE assumed an equal division of shipments between single-phase and three-phase reciprocating compressors for equipment rated less than or equal to 10-hp,[85] while any reciprocating shipments above 10-hp were considered to be three-phase equipment. The equipment classes and their estimated market shares are shown in Table IV.36. DOE used the same shares for all years in the projection.

TABLE IV. 36—SHARE OF SHIPMENTS BY EQUIPMENT CLASS

Equipment class	Description	Market share (%)
RP_FS_L_AC	Rotary Screw, Fixed-Speed, Lubricated, Air Cooled	1.62
RP_FS_L_WC	Rotary Screw, Fixed-Speed, Lubricated, Water-Cooled	0.29
RP_FS_LF_AC	Rotary Screw, Fixed-Speed, Lubricant Free, Air Cooled	0.06

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[83] DOE uses data on manufacturer shipments as a proxy for national sales, as aggregate data on sales are lacking. In general one would expect a close correspondence between shipments and sales.

[84] U.S. Department of Commerce, Census Bureau, Manufacturing and Construction Division, Series MA333P(10)–1, Stationary Air Compressors, Reciprocating, Single and Double Acting (333912110T), 2011.

[85] For this analysis DOE considers 10-hp is the upper nominal power limit for single-phase electric motors and air compressors driven by these motors, For this analysis DOE approximated as 10-hp as 50 ACFM to match available shipment data to the equipment class capacities defined in the engineering analysis. Equipment class capacities are chapter 5 of the TSD.

TABLE IV. 36—SHARE OF SHIPMENTS BY EQUIPMENT CLASS—Continued

Equipment class	Description	Market share (%)
RP_FS_LF_WC	Rotary Screw, Fixed-Speed, Lubricant Free, Water-Cooled	0.04
RP_VS_L_AC	Rotary Screw, Variable-speed, Lubricated, Air Cooled	0.34
RP_VS_L_WC	Rotary Screw, Variable-speed, Lubricated, Water-Cooled	0.06
RP_VS_LF_AC	Rotary Screw, Variable-speed, Lubricant Free, Air Cooled	0.01
RP_VS_LF_WC	Rotary Screw, Variable-speed, Lubricant Free, Water-Cooled	0.02
R1_FS_L_XX	Reciprocating 1-phase, Fixed-Speed, Lubricated, Air Cooled	44.02
R3_FS_L_XX	Reciprocating 3-phase, Fixed-Speed, Lubricated, Air Cooled	53.54

DOE seeks comment on the share of shipments by equipment class, and how these shares may change over time. This is identified as Issue 42 in section VIII.E, "Issues on Which DOE Seeks Comment."

DOE recognizes that an increase in equipment price resulting from energy efficiency standards may affect end user decision-making regarding whether to purchase a new compressor, a refurbished one, or repair the existing failed unit. DOE has not found any information in the literature that indicates a demand price elasticity for commercial and industrial firms. For the NOPR, it used a medium elasticity of −0.5 for commercial customers, and a lower elasticity (−0.25) for industrial customers.[86] DOE used a lower elasticity for industrial customers because these customers are likely to place greater value on the reliability and efficiency provided by new equipment, over the alternative of purchasing used equipment.

DOE seeks comment on whether the assumed price elasticities are reasonable for air compressors. This is identified as Issue 43 in section VIII.E, "Issues on Which DOE Seeks Comment."

H. National Impact Analysis

The NIA assesses the national energy savings (NES) and the national net present value (NPV) from a national perspective of total consumer costs and savings that would be expected to result from new or amended standards at specific efficiency levels. ("Consumer" in this context refers to consumers of the equipment being regulated.) DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual equipment shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses.[87] For the present analysis, DOE forecasted the energy savings, operating cost savings, equipment costs, and NPV of consumer benefits over the lifetime of air compressors sold from 2022 through 2051.

DOE evaluates the impacts of potential standards for compressors by comparing a case without such standards with standards-case projections. For the no-new-standards case, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. For the standards cases, DOE considers how a given standard would likely affect the market shares of equipment with efficiencies greater than the standard.

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each TSL. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs.

Table IV.37 summarizes the inputs and methods DOE used for the NIA analysis for the NOPR. Discussion of these inputs and methods follows the table. See chapter 10 of the NOPR TSD for further details.

TABLE IV. 37—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
Compliance Date of Standard	Late 2021.
Efficiency Trends	No-new-standards case: constant market shares.
Annual Energy Consumption per Unit	Annual weighted-average values are a function of energy use at each TSL.
Total Installed Cost per Unit	Annual weighted-average values are a function of cost at each TSL. Incorporates projection of future equipment prices based on historical data.
Annual Energy Cost per Unit	Annual weighted-average values as a function of the annual energy consumption per unit and energy prices.
Repair and Maintenance Cost per Unit	Annual values do not change with efficiency level.
Energy Prices	AEO 2015 forecasts (to 2040) and extrapolation thereafter.
Energy Site-to-Primary Conversion	A time-series conversion factor based on AEO 2015.
Discount Rate	Three and seven percent.
Present Year	2015.

1. Equipment Efficiency Trends

A key component of the NIA is the trend in energy efficiency projected for the no-new-standards case and each of the standards cases. Section IV.F.8 of this document describes how DOE developed an energy efficiency distribution for the no-new-standards case (which yields a shipment-weighted average efficiency) for each of the considered equipment classes for the first full year of anticipated compliance with an amended standard.

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[86] A price elasticity of -0.5 means that for every 1 percent increase in price, the demand for the product (*i.e.*, shipments) would decline by 0.5 percent. An elasticity of 1 indicates very high elasticity of demand, whereas an elasticity of zero indicates no elasticity of demand. Elasticities are considered constant over time.

[87] For the NIA, DOE adjusts the installed cost data from the LCC analysis to exclude sales tax, which is a transfer.

Several stakeholders commented that manufacturers will continue to increase the efficiency of air compressors in the absence of standards. (CAGI, No. 0014 at p. 247–251; Kaeser Compressors, No. 0014 at p. 252–253; Ingersoll-Rand, No. 0014 at p. 254) Data on the number of air compressor designs by efficiency is available for 2006 through 2014 from manufacturer performance test reports. These data show that in some years the number of higher-efficiency designs increases, indicating a potential average improvement in efficiency. However, DOE has no data indicating what percentage of shipments are attributed to these more-efficient air compressors, so no clear trend toward more efficient air compressors could be determined. Thus, DOE assumed no change in efficiency in the no-new-standards case.

DOE seeks comment on its assumption of no change over time in the market share of more efficient equipment in the no-new-standards case. This is identified as Issue 44 in section VIII.E, "Issues on Which DOE Seeks Comment."

For each standards case, DOE used a "roll-up" scenario to establish the market shares by efficiency level for the year that compliance would be required with new standards (*i.e.,* late 2021). In this case, equipment efficiencies in the no-new-standards case that were above the standard level under consideration would not be affected. After the compliance year, DOE maintained consistency with the no-new-standards case and assumed no change in efficiency.

DOE seeks information on any projected change in equipment efficiencies over time, specifically whether or not the market shares of air compressors by efficiency would change after the publication of a new standard. This is identified as Issue 45 in section VIII.E, "Issues on Which DOE Seeks Comment."

2. National Energy Savings

The national energy savings analysis involves a comparison of national energy consumption of the considered equipment between each potential standards case (TSL) and the no-new-standards case. DOE calculated the national energy consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy consumption (also by vintage). DOE calculated annual NES based on the difference in national energy consumption for the no-new-standards case and for each higher efficiency standard. DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to primary energy (*i.e.,* the energy consumed by power plants to generate site electricity) using annual conversion factors derived from *AEO 2015*. Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

In 2011, in response to the recommendations of a committee on "Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards" appointed by the National Academy of Sciences, DOE announced its intention to use full-fuel-cycle (FFC) measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (August 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in which DOE explained its determination that EIA's National Energy Modeling System (NEMS) is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (August 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector[88] that EIA uses to prepare its *Annual Energy Outlook*. The approach used for deriving FFC measures of energy use and emissions is described in appendix 10A of the NOPR TSD.

3. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are: (1) Total annual installed cost; (2) total annual operating costs; and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of each product shipped during the forecast period. DOE used a discount factor based on real discount rates of 3 percent and 7 percent to discount future costs and savings to present values.

As discussed in section IV.F.1of this document, DOE did not find a firm bases to project a trend in air compressor prices, so DOE used constant real prices as the default. To evaluate the effect of uncertainty regarding the price trend estimates, DOE investigated the impact of different product price forecasts on the consumer NPV for the considered TSLs for air compressors. In addition to the default price trend, DOE considered two equipment price sensitivity cases—(1) a high price decline case based on Air and Gas Compressor Manufacturer historical Producer Price Index (PPI) series[89] and (2) a low price decline case based on *AEO 2015* industrial equipment price trend. The derivation of these price trends and the results of these sensitivity cases are described in appendix 10C of the NOPR TSD.

The operating cost savings are energy cost savings, which are calculated using the estimated energy savings in each year and the projected price of the appropriate form of energy. To estimate energy prices in future years, DOE multiplied the average regional energy prices by the forecast of annual national-average residential energy price changes in the Reference case from *AEO 2015,* which has an end year of 2040. To estimate price trends after 2040, DOE used the average annual rate of change in prices from 2020 to 2040. As part of the NIA, DOE also analyzed scenarios that used inputs from the *AEO 2015* Low Economic Growth and High Economic Growth cases. Those cases have higher and lower energy price trends compared to the Reference case. NIA results based on these cases are presented in appendix 10C of the NOPR TSD.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. DOE uses discount factors based on both a 3-percent and a 7-percent real discount rate, in accordance with guidance provided by the Office of Management and Budget (OMB) to Federal agencies on the development of regulatory analysis.[90] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the "social rate of time preference," which is the rate at which society discounts future consumption flows to their present value.

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[88] For more information on NEMS, refer to *The National Energy Modeling System: An Overview,* DOE/EIA–0581 (98) (Feb.1998) (Available at: *http://www.eia.gov/oiaf/aeo/overview/*).

[89] U.S. Department of Labour, Bureau of Labor Statistics, Air & gas compressors, ex. compressors for ice making, refrigeration, or a/c equipment, Series ID: PCU333912333912112

[90] United States Office of Management and Budget. Circular A–4: Regulatory Analysis," (Sept. 17, 2003), section E (Available at: *www.whitehouse.gov/omb/memoranda/m03–21.html*).

I. Consumer Subgroup Analysis

In analyzing the potential impact of new or amended energy conservation standards on consumers, DOE evaluates the impact on identifiable subgroups of consumers that may be disproportionately affected by a new or amended national standard. The purpose of a subgroup analysis is to determine the extent of any such disproportional impacts. DOE evaluates impacts on particular subgroups of consumers by analyzing the LCC impacts and PBP for those particular consumers from alternative standard levels. For this NOPR, DOE analyzed the impacts of the considered standard levels on small business consumers. DOE used the LCC and PBP spreadsheet model to estimate the impacts of the considered efficiency levels on this subgroup. Chapter 11 in the NOPR TSD describes the consumer subgroup analysis.

J. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to estimate the financial impacts of energy conservation standards on manufacturers of compressors and to estimate the potential impacts of such standards on employment and manufacturing capacity.

The MIA has both quantitative and qualitative aspects and includes analyses of forecasted industry cash flows, the industry net present value (INPV), investments in research and development (R&D) and manufacturing capital, and domestic manufacturing employment. Additionally, the MIA seeks to determine how new energy conservation standards might affect manufacturing capacity and industry competition, as well as how standards contribute to the overall regulatory burden facing manufacturers. Finally, the MIA serves to identify any disproportionate impacts on manufacturer subgroups, including small business manufacturers.

The quantitative part of the MIA primarily relies on the Government Regulatory Impact Model (GRIM), an industry cash flow model with inputs specific to this rulemaking. The key GRIM inputs include data on the industry cost structure, unit production costs, equipment shipments, manufacturer markups, and investments in R&D and manufacturing capital required to produce compliant equipment. The key GRIM output is the INPV, which is the sum of industry annual cash flows over the analysis period, discounted using the industry-weighted average cost of capital. The model uses standard accounting principles to estimate the impacts of new energy conservation standards on a given industry by comparing changes in INPV between a base case and the various standards cases (TSLs). To capture the uncertainty relating to manufacturer pricing strategy following amended standards, the GRIM estimates a range of possible impacts under different markup scenarios.

The qualitative part of the MIA addresses manufacturer characteristics and market trends. Specifically, the MIA considers such factors as a potential standard's impact on manufacturing capacity, R&D capacity, competition within the industry, cumulative impact of other regulations, and impacts on manufacturer subgroups. The complete MIA is outlined in chapter 12 of the NOPR TSD.

DOE conducted the MIA for this rulemaking in three-phases. In Phase 1 of the MIA, DOE prepared a profile of the compressor industry using publicly available information, such as Securities and Exchange Commission (SEC) 10–K reports,[91] market research tools (*e.g.,* Hoovers [92]), corporate annual reports, the U.S. Census Bureau's 2013 Annual Survey of Manufacturers (ASM),[93] and industry trade association membership directories (*e.g.,* CAGI), as well as information obtained through DOE's engineering analysis and market and technology assessment prepared for this rulemaking.

In Phase 2 of the MIA, DOE prepared a framework industry cash-flow analysis to quantify the potential impacts of new energy conservation standards on manufacturers. In general, energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) Creating a need for increased investment; (2) raising production costs per unit; and (3) altering revenue due to higher per-unit prices and changes in sales volumes. To quantify these impacts, DOE uses the GRIM to estimate a series of annual cash flows starting with the announcement of the standard and extending over a 30-year period following the compliance date of the standard. Inputs to the GRIM include annual expected revenues, costs of sales, SG&A expenses, R&D expenses, taxes, and capital expenditures.

In addition, DOE developed interview guides to distribute to manufacturers of compressors in order to develop and refine key GRIM inputs, including product and capital conversion costs, and to gather additional information on the anticipated effects of energy conservation standards on revenues, direct employment, capital assets, industry competitiveness, and subgroup impacts.

In Phase 3 of the MIA, DOE conducted structured, detailed interviews with manufacturers. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics to validate assumptions used in the GRIM and to identify key issues or concerns. A copy of the manufacturer interview guide is provided in appendix 12B of NOPR TSD. Additionally, see section IV.J.3 for a description of the key issues raised by manufacturers during the interviews. As part of Phase 3, DOE also evaluated subgroups of manufacturers that may be disproportionately impacted by amended standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash flow analysis. Such manufacturer subgroups may include small business manufacturers, niche players, and/or manufacturers exhibiting a cost structure that largely differs from the industry average. DOE identified one compressor manufacturer subgroup for which average cost assumptions may not hold: small businesses. The small business subgroup is discussed in section VII.B, "Review under the Regulatory Flexibility Act," and in chapter 12 of the NOPR TSD.

2. GRIM Analysis

As discussed previously, DOE uses the GRIM to quantify the changes in cash flow that result in a higher or lower industry value due to energy conservation standards. The GRIM analysis uses a discounted cash-flow methodology that incorporates manufacturer costs, markups, shipments, and industry financial information as inputs. The GRIM models changes in MPCs, distributions of shipments, investments, and manufacturer margins that could result from new energy conservation standards. The GRIM spreadsheet uses the inputs to arrive at a series of annual cash flows, beginning in 2015 (the base year of the analysis) and continuing to 2051. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. DOE applied a discount rate of 8.7 percent, derived from industry financials and then modified according to feedback received during manufacturer interviews.

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[91] U.S. Securities and Exchange Commission, Annual 10–K Reports (Various Years) (Available at: *www.sec.gov*).

[92] Hoovers Inc., Company Profiles, Various Companies (Available at: *www.hoovers.com/*).

[93] U.S. Census Bureau, Annual Survey of Manufacturers: General Statistics: Statistics for Industry Groups and Industries (2013) (Available at: *http://www.census.gov/manufacturing/asm/index.html*).

In the GRIM, DOE calculates cash flows using standard accounting principles and compares changes in INPV between the base case and each TSL (the standards case). The difference in INPV between the base case and a standards case represents the financial impact of the energy conservation standard on manufacturers. Additional details about the GRIM, the discount rate, and other financial parameters can be found in chapter 12 of the NOPR TSD.

a. GRIM Key Inputs

i. Manufacturer Production Costs

Manufacturer production costs (MPCs) are those incurred by the manufacturer to produce a covered compressor. The cost includes raw materials and purchased components, production labor, factory overhead, and production equipment depreciation. Changes in the MPCs of the analyzed equipment can affect revenues, gross margins, and industry cash flows. In the MIA, DOE used the MPCs for each efficiency level calculated in the engineering analysis, as described in section IV.C.7 and further detailed in chapter 5 of the NOPR TSD.

ii. Manufacturer Markups

Manufacturer selling prices (MSPs) include direct manufacturing production costs and all non-production costs (*i.e.*, SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied non-production cost markups to the MPCs estimated in the engineering analysis for each equipment class and efficiency level. For the MIA, DOE modeled a baseline markup for the compressor industry in both the base case and the standards case.

With a baseline markup, DOE applied a uniform "gross margin percentage" for each equipment class, across all efficiency levels. This assumes that manufacturers would be able to maintain the same amount of profit as a percentage of revenues at all efficiency levels within an equipment class. As production costs increase with efficiency, the absolute dollar markup will increase as well. As discussed in section IV.C.7, DOE estimated the average non-production cost baseline markup—which includes SG&A expenses, R&D expenses, interest, and profit—to be 1.35 for lubricated rotary compressors, 1.40 for lubricant-free rotary compressors, and 1.26 for reciprocating compressors.

Jenny commented that markups data only based on publicly available information may not be accurate and may not contain key pricing and costing information. (Jenny, No. 0005 at p. 4) DOE agrees. To develop its estimated baseline markups, DOE used both publicly available financial information as well as comments and data received directly from manufacturers during confidential interviews.

iii. Shipments Forecast

The GRIM estimates manufacturer revenues based on total unit shipment forecasts and the distribution of shipments by equipment class. Changes in sales volumes and efficiency mix over time can significantly affect manufacturer finances. For this analysis, the GRIM uses the NIA's annual shipment forecasts derived from the shipments analysis from 2015 (the base year) to 2051 (the end year of the analysis period). See chapter 9 of the NOPR TSD for additional details.

iv. Product and Capital Conversion Costs

Energy conservation standards can cause manufacturers to incur conversion costs to make necessary changes to their production facilities and bring equipment designs into compliance. DOE evaluated the level of conversion-related expenditures that would be needed to comply with each considered efficiency level in each equipment class. For the purpose of the MIA, DOE classified these conversion costs into two major groups: (1) Product conversion costs; and (2) capital conversion costs. Product conversion costs are investments in research, development, testing, and marketing, focused on making equipment designs comply with the energy conservation standard. Capital conversion costs are investments in property, plant, and equipment to adapt or change existing production facilities so that compliant equipment designs can be fabricated and assembled. Ultimately, for the MIA, DOE modeled two standards-case conversion cost scenarios to represent uncertainty regarding the potential impacts on manufacturers following the implementation of energy conservation standards. These scenarios are discussed further in section IV.J.2.b.

v. Financial Parameters

DOE estimated eight key financial parameters for use in the GRIM. Table IV.38 describes these parameters and summarizes DOE's estimated values. DOE notes that each estimate represents an industry average value.

Jenny commented that "deriving baseline information from publicly traded companies is problematic at best . . . a very high percentage of compressors sold in the US come from small, privately held companies." (Jenny, No. 0005 at p. 5)

To estimate the financial parameters outlined in Table IV.38, DOE first created estimates based on publicly available financial information for manufacturers of compressors. DOE then revised its initial estimates based on discussions with both private and public compressor companies. Table IV.38 presents the financial parameters incorporated into the GRIM, which reflect data from both public and private compressor manufacturing companies.

TABLE IV.38—INDUSTRY AVERAGE FINANCIAL PARAMETERS FOR ROTARY AND RECIPROCATING COMPRESSOR MANUFACTURERS

Financial parameter	Definition	Estimated industry average value %
Income Tax Rate	Corporate effective income tax paid (percentage of earnings before taxes, EBT)	25.0
Discount Rate	Weighted average cost of capital (inflation-adjusted weighted average of corporate cost of debt and return on equity).	8.7
Working Capital	Current assets less current liabilities (percentage of revenues)	17.3
Net Property, Plant & Equipment	Fixed assets, or long-lived assets, including building, machinery, and equipment less accumulated depreciation (percentage of revenues).	11.4
SG&A	Selling, general, and administrative expenses (percentage of revenues)	17.2
R&D	Research and development expenses (percentage of revenues)	2.1
Depreciation	Amortization of fixed assets (percentage of revenues)	3.0

TABLE IV.38—INDUSTRY AVERAGE FINANCIAL PARAMETERS FOR ROTARY AND RECIPROCATING COMPRESSOR MANUFACTURERS—Continued

Financial parameter	Definition	Estimated industry average value %
Capital Expenditures	Outlay of cash to acquire or improve capital assets (percentage of revenues, not including acquisition or sale of business units).	3.2

DOE requests comment on its estimates of average industry financial parameters. This is identified as Issue 46 in section VIII.E, "Issues on Which DOE Seeks Comment."

b. GRIM Scenarios

i. Conversion Cost Scenarios

As mentioned previously, DOE modeled two standards-case conversion cost scenarios to represent uncertainty regarding the potential impacts on manufacturers following the implementation of energy conservation standards: (1) A low conversion cost scenario; and (2) a high conversion cost scenario.

Specifically, the two scenarios explore uncertainty in conversion cost, as it relates to the draft EU minimum energy efficiency standards for compressors. During confidential interviews, multiple manufactures indicated that they sell similar equipment in the U.S. and the EU. They also indicated that if the EU adopted the draft standard for compressors, the efficiency of some equipment sold in the U.S. would be improved by windfall. As such, if the EU adopts its draft standard, which would be phased in from 2018 to 2020,[94] a significant amount of globally marketed equipment would already exhibit improved efficiency, regardless of a DOE standard. However, because the EU standard is currently in draft stage, and is not yet adopted, DOE chose to use a scenario analysis to evaluate its potential impacts on conversion cost.

DOE notes that conversion costs only vary between the scenarios for lubricated rotary equipment, as lubricant-free rotary equipment is not proposed for coverage in the EU (but may be evaluated for future coverage—see section IV.A.2.b), and DOE is unaware of any reciprocating compressor models sold in both the EU and the United States.

The low conversion cost scenario assumes that manufacturers active in the EU market will not face additional product conversion costs to adapt to a U.S. standard that is at or below the draft EU level (EL 3 and TSL 3). If the U.S. standard is above the draft EU level, these manufacturers would still incur full redesign costs. In the high conversion cost scenario, all manufacturers face full product conversion costs, regardless of an EU regulation. DOE notes that Manufacturers that are not active in the EU market will face the same conversion costs, regardless of the scenario.

To evaluate the magnitude of each product and capital conversion cost scenario, DOE relied on cost estimates provided by representative manufacturers as well as estimates and appraisals provided by consultants familiar with compressor and general industrial manufacturing.

DOE first determined conversion costs for the high scenario. To find industry-wide conversion costs for each equipment class, DOE first estimated the average cost per manufacturer to redesign all covered equipment in its portfolio; this corresponds to the conversion costs needed to reach the max-tech efficiency level. For each equipment class, DOE then multiplied the per-manufacturer conversion costs by the number of manufacturers active in the equipment class with a market share greater than three percent. DOE believes its per-manufacturer conversion cost estimates were sufficiently conservative such that this method yields an estimate of total industry conversion costs to reach the max-tech efficiency level for each equipment class.

Next, DOE scaled the max-tech conversion costs down to each efficiency level considered in this NOPR. To do this, DOE multiplied the max-tech conversion costs by the percentage of models in each equipment class that fail at each efficiency level. For rotary equipment classes, DOE estimated the percentage of models failing at each efficiency level using the CAGI database.

For reciprocating equipment classes, no product data was available to help estimate the percentage of models failing at each efficiency level. In the absence of direct data, failure rates for rotary compressor equipment were used as a proxy. DOE selected this approach as efficiency levels for reciprocating and rotary compressors were established using similar methods, and each efficiency level represents the same relative efficiency, with respect to baseline and max-tech (as discussed in section IV.C.5). Specifically, for all equipment classes, DOE established efficiency levels at baseline (EL 0), max-tech (EL 6), and a d-value of zero (EL 3). DOE also established two intermediary efficiency levels between the baseline and a d-value of zero (ELs 1 and EL 2), and two efficiency levels between the d-value of zero level and max-tech (ELs 4 and 5). Furthermore, DOE believes that rotary and reciprocating equipment may have similar distributions of efficiency, with respect to baseline and max-tech, as indicated by graphical data presented in the Lot 31 study.[95]

DOE requests comment on the use of failure rates for rotary compressor equipment as a proxy for reciprocating equipment failure rates. This is identified as Issue 47 in section VIII.E, "Issues on Which DOE Seeks Comment."

To estimate conversion costs for the low scenario, DOE reduced the lubricated rotary product conversion costs by 31.25-percent at each efficiency level at or below the draft EU level. The value of 31.25-percent represents DOE's estimate of the percentage of U.S. lubricated rotary models that are offered for sale in the EU and may be redesigned to meet the draft EU level.

Table IV.39 and Table IV.40 present the resulting product and capital conversion costs at each efficiency level, for three major groupings of equipment classes. Due to commonality in design and components, DOE is presenting the conversion costs for the following equipment classes in aggregate: (1) Rotary, lubricated, fixed-speed and variable-speed, air and water cooled; (2) rotary, lubricant-free, VSD, fixed-speed and variable-speed, air and water cooled; and (3) reciprocating, 1- and 3-

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[94] See Draft EU Compressors Regulation, Article 3 at p. 4, available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0040-0031.*

[95] See Lot 31 Study, figures 1–1 through 1–3 at pp. 26–28 available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0040-0031.*

phase. Complete results by equipment class, as well as details on the calculation of industry aggregate product and capital conversion costs are found in chapter 12 of the NOPR TSD. A comparison of industry financial impacts under the two conversion cost scenarios is presented in section V.B.2.a of this document.

TABLE IV.39—AGGREGATE INDUSTRY PRODUCT CONVERSION COST, EXCLUDING COMPLIANCE AND TESTING COSTS,** AT EACH EFFICIENCY LEVEL

[In $Millions]

All values in millions of dollars	Scenario	EL 1	EL 2	EL 3	EL 4	EL 5	EL 6
RP_FS_L_AC RP_VS_L_AC	Low	16	57	144	269	333	424
RP_FS_L_WC RP_VS_L_WC	High	24	84	210	269	333	424
RP_FS_LF_AC RP_VS_LF_AC RP_FS_LF_WC RP_VS_LF_WC	Not Applicable	10	27	59	75	92	112
R3_FS_L_XX R1_FS_L_XX	Not Applicable	2	5	13	17	21	27

* Due to commonality in design and components, DOE is presenting conversion costs in three aggregated equipment class groups. Complete results by equipment class are available in chapter 12 of the NOPR TSD.

** Note that compliance and testing cost estimates are presented separately, later in this section.

TABLE IV.40—AGGREGATE INDUSTRY CAPITAL CONVERSION COST AT EACH EFFICIENCY LEVEL

All values in millions of dollars	EL 1	EL 2	EL 3	EL 4	EL 5	EL 6
RP_FS_L_AC RP_VS_L_AC RP_FS_L_WC RP_VS_L_WC	8	29	73	92	113	143
Rotary, Non-Lubricated, FS & VSD, AC & WC*	3	9	20	26	32	38
RP_FS_LF_AC RP_VS_LF_AC RP_FS_LF_WC RP_VS_LF_WC	1	3	8	10	12	16

* Due to commonality in design and components, DOE is presenting conversion costs in three aggregated equipment class groups. Complete results by equipment class are available in chapter 12 of the NOPR TSD.

DOE also estimated the magnitude of the aggregate industry compliance testing costs needed to conform to new energy conservation standards. Although compliance testing costs are a subset of product conversion costs, DOE estimated these costs separately. DOE pursued this approach because no energy conservation standards currently exist for compressors; as such, all basic models[96] will be required to be tested and certified to comply with new energy conservation standards regardless of the level of such a standard. As a result, the industry-wide magnitude of these compliance testing costs will be constant, regardless of the selected standard level.

DOE notes that new energy conservation standards will require every model offered for sale to be tested according to the sampling plan proposed in the test procedure NOPR. This proposed sampling plan specifies that a minimum of two units must be tested to certify a basic model as compliant.

DOE estimated the industry-wide magnitude of compliance testing by multiplying the estimated number of models currently in each equipment class by the cost to test each model, and doubling this value to account for the minimum sample size of two units per basic model. DOE estimated the total number of rotary models in the industry by scaling the model counts in the CAGI database by CAGI's estimated market share. The number of reciprocating models was estimated using data collected from manufacturer Web sites. DOE estimated the cost to test each model to the method proposed in the test procedure NOPR from discussions with third-party compressor test labs as well as information gathered during confidential manufacturer interviews. Table IV.41 presents DOE's estimates of aggregate industry compliance testing costs for each equipment class. Complete details on the calculation of aggregate industry compliance testing costs are found in chapter 12 of the NOPR TSD.

TABLE IV.41—AGGREGATE INDUSTRY COMPLIANCE TESTING COST

Equipment class	Aggregate industry compliance testing cost ($Millions)
RP_FS_L_AC	4.72
RP_VS_L_AC	2.48
RP_FS_L_WC	0.95
RP_VS_L_WC	0.50
RP_FS_LF_AC	2.16

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[96] In the test procedure NOPR, DOE proposes to define the term "basic model" as "all units of a class of compressors manufactured by one manufacturer, having the same primary energy source, the same compressor motor nominal horsepower, and essentially identical electrical, physical, and functional (or pneumatic) characteristics that affect energy consumption and energy efficiency."

TABLE IV.41—AGGREGATE INDUSTRY COMPLIANCE TESTING COST—Continued

Equipment class	Aggregate industry compliance testing cost ($Millions)
RP_VS_LF_AC	1.34
RP_FS_LF_WC	0.46
RP_VS_LF_WC	0.24
R1_FS_L_XX	5.57
R3_FS_L_XX	25.1

In general, DOE assumes that all conversion-related investments occur between the year of publication of the final rule and the year by which manufacturers must comply with the standard.

DOE requests feedback on its conversion cost methodology, including quantitative estimates and qualitative descriptions of the capital and product conversion costs manufacturers would incur in order to comply with amended energy conservation standards. This is identified as Issue 48 in section VIII.E, "Issues on Which DOE Seeks Comment."

3. Manufacturer Interviews

As part of the MIA, DOE discussed potential impacts of standards with nine compressor manufacturers. The interviewed manufacturers account for approximately 70 percent of the domestic rotary compressor market and approximately 20 percent of the domestic reciprocating compressor market. In interviews, DOE asked manufacturers to describe their major concerns about this rulemaking. This section highlights manufacturer statements that helped shaped DOE's understanding of the potential impacts of an energy conservation standard on the industry.

a. Conversion Requirements

Manufacturers raised concerns over potentially significant conversion costs, particularly at higher efficiency levels. Several manufacturers of rotary equipment indicated that if U.S. standards exceed the levels proposed in the draft EU Lot 31 compressors standards, adequate capital may not be available to fund the redesigns and manufacturing equipment needed to maintain their current product portfolios. At higher efficiency levels, namely those that remove more than 75-percent of models from the market, many indicated they would consider closing manufacturing facilities rather than make the investments necessary to comply with such efficiency standards.

b. Engineering Constraints and Development Cycle Times

The primary efficiency-improving technology option discussed in this NOPR is compressor package redesign. A compressor package redesign relies on the expertise of many highly trained engineers to redesign a compressor to higher efficiency levels, while still meeting other performance and reliability criteria. Many manufacturers of rotary equipment expressed concern surrounding insufficient availability of engineering resources required to redesign a high volume of compressor packages during a short time period. Manufacturers indicated that most experienced compressor design engineers are already employed within the industry, which limits their ability to rapidly expand their research and development teams if faced with a high volume of required compressor redesigns. Consequently, manufacturers typically commented that at standard levels at or above the equivalent of TSL 3, these engineering constraints could create time delays in complying with new standards. DOE notes that manufacturers typically discussed this constraint with respect to a three-year compliance period.

Some manufacturers indicated that a longer compliance period, such as the five-year compliance period proposed in this document, may ease their concern over engineering constraints, as their existing engineering teams would be able to accomplish more redesigns if given more time. Under business-as-usual conditions most manufacturers indicated that a typical lubricated rotary compressor redesign would last between 18 and 24 months. This timeframe is expected to extend if R&D teams are faced with large numbers of concurrent redesigns.

c. Relationship to the Draft European Union Energy Efficiency Standards

Some manufacturers emphasized the importance of harmonizing U.S. energy conservation standards with proposed EU standards for compressors. Some manufacturers have already begun preparations for the proposed EU standard. These manufacturers stated that harmonized standards would promote regulatory consistency and would enable them to better coordinate product redesigns and reduce conversion costs. If U.S. and EU standards are not harmonized, these manufacturers noted they would either have to carry a greater number of equipment lines to comply with efficiency standards in both domestic and European markets, or sell a single set of high efficiency equipment in both markets. The former adds complexity and cost. The latter may put the manufacturer at a competitive disadvantage in the market regulated to a lower efficiency.

Conversely, some manufacturers expressed concern that the proposed EU standard levels are too aggressive, and they indicated that such a level in the U.S. could result in adverse impacts to manufacturers.

d. Unfair Advantages for Replacement Technologies

Many manufacturers of rotary equipment expressed concerns that energy conservation standards on rotary compressors of 200-hp or greater may provide unfair advantages to competing technologies such as dynamic compressors (also known as centrifugal compressors). These manufacturers contend that both technologies are already competitive above 200-hp and both offer certain advantages to the end user. Increased prices resulting from a standard on only rotary equipment could push more end users to choose dynamic compressors, which would remain unregulated and unchanged in price. Furthermore, these manufacturers believe that coverage of only rotary compressors will unfairly burden them with costs and expenses not seen by their dynamic compressor competition.

e. Uncertainty of Compliance Cost for Reciprocating Equipment

Some manufacturers of reciprocating equipment indicated that most reciprocating equipment in the U.S. market are not currently tested or labeled for efficiency. These manufacturers expressed two concerns related to this issue: (1) Many manufacturers do not currently know the efficiency of their equipment, and therefore cannot estimate the impact of the standard and the cost to their organization; and (2) many manufacturers do not currently have test facilities and will be required to either build facilities or utilize third-party test labs, both of which are new and unfamiliar costs to them.

K. Emissions Analysis

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) combustion emissions of CO_2, NO_X, SO_2, and Hg. The second component estimates the impacts of potential standards on emissions of two additional greenhouse gases, CH_4 and N_2O, as well as the reductions to emissions of all species due to "upstream" activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion. The associated emissions are referred to as upstream emissions.

The analysis of power sector emissions uses marginal emissions factors that were derived from data in *AEO 2015*, as described in section IV.M. The methodology is described in chapter 13 and chapter 15 of the NOPR TSD.

Combustion emissions of CH_4 and N_2O are estimated using emissions intensity factors from the EPA GHG Emissions Factors Hub.[97] The FFC upstream emissions are estimated based on the methodology described in chapter 15 of the NOPR TSD. The upstream emissions include both emissions from fuel combustion during extraction, processing, and transportation of fuel, and "fugitive" emissions (direct leakage to the atmosphere) of CH_4 and CO_2.

The emissions intensity factors are expressed in terms of physical units per megawatt hour (MWh) or million British thermal units (MMBtu) of site energy savings. Total emissions reductions are estimated using the energy savings calculated in the national impact analysis.

The *AEO 2015* projections incorporate the projected impacts of existing air quality regulations on emissions. *AEO 2015* generally represents current legislation and environmental regulations, including recent government actions, for which implementing regulations were available as of October 31, 2014. DOE's estimation of impacts accounts for the presence of the emissions control programs discussed in the following paragraphs.

SO_2 emissions from affected electric generating units (EGUs) are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (DC). (42 U.S.C. 7651 *et seq.*) SO_2 emissions from 28 eastern States and DC were also limited under the Clean Air Interstate Rule (CAIR). 70 FR 25162 (May 12, 2005). CAIR created an allowance-based trading program that operates along with the Title IV program. In 2008, CAIR was remanded to EPA by the U.S. Court of Appeals for the District of Columbia Circuit, but it remained in effect.[98] In 2011, EPA issued a replacement for CAIR, the Cross-State Air Pollution Rule (CSAPR). 76 FR 48208 (August 8, 2011). On August 21, 2012, the DC Circuit issued a decision to vacate CSAPR,[99] and the court ordered EPA to continue administering CAIR. On April 29, 2014, the U.S. Supreme Court reversed the judgment of the DC Circuit and remanded the case for further proceedings consistent with the Supreme Court's opinion.[100] On October 23, 2014, the DC Circuit lifted the stay of CSAPR.[101] Pursuant to this action, CSAPR went into effect (and CAIR ceased to be in effect) as of January 1, 2015.

EIA was not able to incorporate CSAPR into *AEO 2015*, so it assumes implementation of CAIR. Although DOE's analysis used emissions factors that assume that CAIR, not CSAPR, is the regulation in force, the difference between CAIR and CSAPR is not significant for the purpose of DOE's analysis of emissions impacts from energy conservation standards.

The attainment of emissions caps is typically flexible among EGUs and is enforced through the use of emissions allowances and tradable permits. Under existing EPA regulations, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by any regulated EGU. In past rulemakings, DOE recognized that there was uncertainty about the effects of efficiency standards on SO_2 emissions covered by the existing cap-and-trade system, but it concluded that negligible reductions in power sector SO_2 emissions would occur as a result of standards.

Beginning in 2016, however, SO_2 emissions will fall as a result of the Mercury and Air Toxics Standards (MATS) for power plants. 77 FR 9304 (Feb. 16, 2012). In the MATS rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (HAP), and also established a standard for SO_2 (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO_2 emissions will be reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. *AEO 2015* assumes that, in order to continue operating, coal plants must have either flue gas desulfurization or dry sorbent injection systems installed by 2016. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2 emissions. Under the MATS, emissions will be far below the cap established by CAIR, so it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO_2 emissions by any regulated EGU.[102] Therefore, DOE believes that energy conservation standards will generally reduce SO_2 emissions in 2016 and beyond.

CAIR established a cap on NO_X emissions in 28 eastern States and the District of Columbia.[103] Energy conservation standards are expected to have little effect on NO_X emissions in those States covered by CAIR because excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions from other facilities. However, standards would be expected to reduce NO_X emissions in the States not affected by the caps, so DOE estimated NO_X emissions reductions from the standards considered in this NOPR for these States.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, DOE's energy conservation standards would likely reduce Hg emissions. DOE estimated mercury emissions reduction using emissions factors based on *AEO 2015,* which incorporates the MATS.

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[97] Available at: ***http://www2.epa.gov/climateleadership/center-corporate-climate-leadership-ghg-emission-factors-hub.***

[98] See *North Carolina* v. *EPA*, 550 F.3d 1176 (D.C. Cir. 2008); *North Carolina* v. *EPA*, 531 F.3d 896 (D.C. Cir. 2008).

[99] See *EME Homer City Generation, LP* v. *EPA*, 696 F.3d 7, 38 (D.C. Cir. 2012), *cert. granted*, 81 U.S.L.W. 3567, 81 U.S.L.W. 3696, 81 U.S.L.W. 3702 (U.S. June 24, 2013) (No. 12–1182).

[100] See *EPA* v. *EME Homer City Generation*, 134 S.Ct. 1584, 1610 (2014). The Supreme Court held in part that EPA's methodology for quantifying emissions that must be eliminated in certain States due to their impacts in other downwind States was based on a permissible, workable, and equitable interpretation of the Clean Air Act provision that provides statutory authority for CSAPR.

[101] See Georgia v. EPA, Order (D.C. Cir. filed October 23, 2014) (No. 11–1302).

[102] DOE notes that the Supreme Court recently remanded EPA's 2012 rule regarding national emission standards for hazardous air pollutants from certain electric utility steam generating units. See *Michigan* v. *EPA* (Case No. 14–46, 2015). DOE has tentatively determined that the remand of the MATS rule does not change the assumptions regarding the impact of energy efficiency standards on SO_2 emissions. Further, while the remand of the MATS rule may have an impact on the overall amount of mercury emitted by power plants, it does not change the impact of the energy efficiency standards on mercury emissions. DOE will continue to monitor developments related to this case and respond to them as appropriate.

[103] CSAPR also applies to NO_X and it supersedes the regulation of NO_X under CAIR. As stated previously, the current analysis assumes that CAIR, not CSAPR, is the regulation in force. The difference between CAIR and CSAPR with regard to DOE's analysis of NO_X emissions is slight.

L. Monetizing Carbon Dioxide and Other Emissions Impacts

As part of the development of this proposed rule, DOE considered the estimated monetary benefits from the reduced emissions of CO_2 and NO_X that are expected to result from each of the TSLs considered. In order to make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of equipment shipped in the forecast period for each TSL. This section summarizes the basis for the monetary values used for CO_2 and NO_X emissions and presents the values considered in this NOPR.

1. Social Cost of Carbon

The SCC is an estimate of the monetized damages associated with an incremental increase in carbon emissions in a given year. It is intended to include (but is not limited to) climate-change-related changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services. Estimates of the SCC are provided in dollars per metric ton of CO_2. A domestic SCC value is meant to reflect the value of damages in the United States resulting from a unit change in CO_2 emissions, while a global SCC value is meant to reflect the value of damages worldwide.

Under section 1(b)(6) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), agencies must, to the extent permitted by law, "assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs." The purpose of the SCC estimates presented here is to allow agencies to incorporate the monetized social benefits of reducing CO_2 emissions into cost-benefit analyses of regulatory actions. The estimates are presented with an acknowledgement of the many uncertainties involved and with a clear understanding that they should be updated over time to reflect increasing knowledge of the science and economics of climate impacts.

As part of the interagency process that developed these SCC estimates, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. The main objective of this process was to develop a range of SCC values using a defensible set of input assumptions grounded in the existing scientific and economic literatures. In this way, key uncertainties and model differences transparently and consistently inform the range of SCC estimates used in the rulemaking process.

a. Monetizing Carbon Dioxide Emissions

When attempting to assess the incremental economic impacts of CO_2 emissions, the analyst faces a number of challenges. A report from the National Research Council[104] points out that any assessment will suffer from uncertainty, speculation, and lack of information about: (1) Future emissions of GHGs; (2) the effects of past and future emissions on the climate system; (3) the impact of changes in climate on the physical and biological environment; and (4) the translation of these environmental impacts into economic damages. As a result, any effort to quantify and monetize the harms associated with climate change will raise questions of science, economics, and ethics and should be viewed as provisional.

Despite the limits of both quantification and monetization, SCC estimates can be useful in estimating the social benefits of reducing CO_2 emissions. The agency can estimate the benefits from reduced (or costs from increased) emissions in any future year by multiplying the change in emissions in that year by the SCC values appropriate for that year. The NPV of the benefits can then be calculated by multiplying each of these future benefits by an appropriate discount factor and summing across all affected years.

It is important to emphasize that the interagency process is committed to updating these estimates as the science and economic understanding of climate change and its impacts on society improves over time. In the meantime, the interagency group will continue to explore the issues raised by this analysis and consider public comments as part of the ongoing interagency process.

b. Development of Social Cost of Carbon Values

In 2009, an interagency process was initiated to offer a preliminary assessment of how best to quantify the benefits from reducing carbon dioxide emissions. To ensure consistency in how benefits are evaluated across Federal agencies, the Administration sought to develop a transparent and defensible method, specifically designed for the rulemaking process, to quantify avoided climate change damages from reduced CO_2 emissions. The interagency group did not undertake any original analysis. Instead, it combined SCC estimates from the existing literature to use as interim values until a more comprehensive analysis could be conducted. The outcome of the preliminary assessment by the interagency group was a set of five interim values: Global SCC estimates for 2007 (in 2006$) of $55, $33, $19, $10, and $5 per metric ton of CO_2. These interim values represented the first sustained interagency effort within the U.S. government to develop an SCC for use in regulatory analysis. The results of this preliminary effort were presented in several proposed and final rules.

c. Current Approach and Key Assumptions

After the release of the interim values, the interagency group reconvened on a regular basis to generate improved SCC estimates. Specially, the group considered public comments and further explored the technical literature in relevant fields. The interagency group relied on three integrated assessment models commonly used to estimate the SCC: The FUND, DICE, and PAGE models. These models are frequently cited in the peer-reviewed literature and were used in the last assessment of the Intergovernmental Panel on Climate Change (IPCC). Each model was given equal weight in the SCC values that were developed.

Each model takes a slightly different approach to model how changes in emissions result in changes in economic damages. A key objective of the interagency process was to enable a consistent exploration of the three models, while respecting the different approaches to quantifying damages taken by the key modelers in the field. An extensive review of the literature was conducted to select three sets of input parameters for these models: Climate sensitivity, socio-economic and emissions trajectories, and discount rates. A probability distribution for climate sensitivity was specified as an input into all three models. In addition, the interagency group used a range of scenarios for the socio-economic parameters and a range of values for the discount rate. All other model features were left unchanged, relying on the model developers' best estimates and judgments.

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[104] National Research Council, *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use,* National Academies Press: Washington, DC (2009).

In 2010, the interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from the three integrated assessment models, at discount rates of 2.5-, 3-, and 5-percent. The fourth set, which represents the 95th percentile SCC estimate across all three models at a 3-percent discount rate, was included to represent higher-than-expected impacts from climate change further out in the tails of the SCC distribution. The values grow in real terms over time. Additionally, the interagency group determined that a range of values from 7-percent to 23-percent should be used to adjust the global SCC to calculate domestic effects,[105] although preference is given to consideration of the global benefits of reducing CO_2 emissions. Table IV.42 presents the values in the 2010 interagency group report,[106] which is reproduced in appendix 14A of the NOPR TSD.

TABLE IV.42—ANNUAL SCC VALUES FROM 2010 INTERAGENCY REPORT, 2010–2050

[2007$ per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	4.7	21.4	35.1	64.9
2015	5.7	23.8	38.4	72.8
2020	6.8	26.3	41.7	80.7
2025	8.2	29.6	45.9	90.4
2030	9.7	32.8	50.0	100.0
2035	11.2	36.0	54.2	109.7
2040	12.7	39.2	58.4	119.3
2045	14.2	42.1	61.7	127.8
2050	15.7	44.9	65.0	136.2

The SCC values used for this document were generated using the most recent versions of the three integrated assessment models that have been published in the peer-reviewed literature, as described in the 2013 update from the interagency working group (revised July 2015).[107] Table IV.43 shows the updated sets of SCC estimates from the latest interagency update in 5-year increments from 2010 to 2050. The full set of annual SCC values between 2010 and 2050 is reported in appendix 14B of the NOPR TSD. The central value that emerges is the average SCC across models at the 3-percent discount rate. However, for purposes of capturing the uncertainties involved in regulatory impact analysis, the interagency group emphasizes the importance of including all four sets of SCC values.

TABLE IV.43—ANNUAL SCC VALUES FROM 2013 INTERAGENCY UPDATE (REVISED JULY 2015), 2010–2050

[2007$ per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	10	31	50	86
2015	11	36	56	105
2020	12	42	62	123
2025	14	46	68	138
2030	16	50	73	152
2035	18	55	78	168
2040	21	60	84	183
2045	23	64	89	197
2050	26	69	95	212

It is important to recognize that a number of key uncertainties remain, and that current SCC estimates should be treated as provisional and revisable because they will evolve with improved scientific and economic understanding. The interagency group also recognizes that the existing models are imperfect and incomplete. The National Research Council report mentioned previously points out that there is tension between the goal of producing quantified estimates of the economic damages from an incremental ton of carbon and the limits of existing efforts to model these effects. There are a number of analytical challenges that are being addressed by the research community, including research programs housed in many of the Federal agencies participating in the interagency process to estimate the SCC. The interagency group intends to periodically review and reconsider those estimates to reflect increasing knowledge of the science and economics of climate impacts, as well as improvements in modeling.[108]

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[105] It is recognized that this calculation for domestic values is approximate, provisional, and highly speculative. There is no *a priori* reason why domestic benefits should be a constant fraction of net global damages over time.

[106] *Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866.* Interagency Working Group on Social Cost of Carbon, United States Government (February 2010) (Available at: *www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf*).

[107] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,* Interagency Working Group on Social Cost of Carbon, United States Government (May 2013; revised July 2015) (Available at: *http://www.whitehouse.gov/sites/default/files/omb/inforeg/scc-tsd-final-july-2015.pdf*).

In summary, in considering the potential global benefits resulting from reduced CO_2 emissions, DOE used the values from the 2013 interagency report (revised July 2015), adjusted to 2015$ using the implicit price deflator for gross domestic product (GDP) from the Bureau of Economic Analysis. For each of the four sets of SCC cases specified, the values for emissions in 2015 were $12.2, $40.0, $62.3, and $117 per metric ton avoided (values expressed in 2015$). DOE derived values after 2050 based on the trend in 2010–2050 in each of the four cases.

DOE multiplied the CO_2 emissions reduction estimated for each year by the SCC value for that year in each of the four cases. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SCC values in each case.

2. Social Cost of Other Air Pollutants

As noted previously, DOE has estimated how the considered energy conservation standards would decrease power sector NO_X emissions in those 22 States not affected by the CAIR.

DOE estimated the monetized value of net NO_X emissions reductions using benefit per ton estimates from the *Regulatory Impact Analysis for the Clean Power Plan Final Rule,* published in August 2015 by EPA's Office of Air Quality Planning and Standards.[109] The report includes high and low values for NO_X (as $PM_{2.5}$) for 2020, 2025, and 2030 discounted at 3 percent and 7 percent; these values are presented in chapter 14 of the NOPR TSD. DOE primarily relied on the low estimates to be conservative.[110] DOE assigned values for 2021–2024 and 2026–2029 using, respectively, the values for 2020 and 2025. DOE assigned values after 2030 using the value for 2030. DOE developed values specific to the end-use category for compressors using a method described in appendix 14–C.

DOE multiplied the emissions reduction (tons) in each year by the associated $/ton values, and then discounted each series using discount rates of 3-percent and 7-percent as appropriate. DOE will continue to evaluate the monetization of avoided NO_X emissions and will make any appropriate updates of the current analysis for the final rulemaking.

DOE is evaluating appropriate monetization of avoided SO_2 and Hg emissions in energy conservation standards rulemakings. DOE has not included monetization of those emissions in the current analysis.

M. Utility Impact Analysis

The utility impact analysis estimates several effects on the electric power generation industry that would result from the adoption of new or amended energy conservation standards. The utility impact analysis DOE estimates the changes in installed electrical capacity and generation that would result for each TSL. The analysis is based on published output from the NEMS, associated with *AEO 2015*. NEMS produces the *AEO* Reference case, as well as a number of side cases that estimate the economy-wide impacts of changes to energy supply and demand. DOE uses published side cases that incorporate efficiency-related policies to estimate the marginal impacts of reduced energy demand on the utility sector. These marginal factors are estimated based on the changes to electricity sector generation, installed capacity, fuel consumption and emissions in the *AEO* Reference case and various side cases. Details of the methodology are provided in the appendices to Chapters 13 and 15 of the NOPR TSD.

The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of new or amended energy conservation standards.

N. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a proposed standard. Employment impacts from new or amended energy conservation standards include both direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the equipment subject to standards, their suppliers, and related service firms. The MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more-efficient appliances. Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, caused by: (1) Reduced spending by end users on energy; (2) reduced spending on new energy supply by the utility industry; (3) increased consumer spending on new equipment to which the new standards apply; and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's Bureau of Labor Statistics (BLS).[111] BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[112] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, the BLS data suggest that net national employment may increase due to shifts in economic activity resulting from energy conservation standards.

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[108] In November 2013, OMB announced a new opportunity for public comment on the interagency technical support document underlying the revised SCC estimates. 78 FR 70586. In July 2015 OMB published a detailed summary and formal response to the many comments that were received. *https://www.whitehouse.gov/blog/2015/07/02/estimating-benefits-carbon-dioxide-emissions-reductions.* It also stated its intention to seek independent expert advice on opportunities to improve the estimates, including many of the approaches suggested by commenters.

[109] Available at: *http://www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.* See Tables 4A–3, 4A–4, and 4A–5 in the report.

[110] For the monetized NO_X benefits associated with $PM_{2.5}$, the related benefits are primarily based on an estimate of premature mortality derived from the ACS study (Krewski et al. 2009), which is the lower of the two EPA central tendencies. Using the lower value is more conservative when making the policy decision concerning whether a particular standard level is economically justified. If the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al. 2012), the values would be nearly two-and-a-half times larger. (See chapter 14 of the NOPR TSD for citations for the studies mentioned above.)

[111] Data on industry employment, hours, labor compensation, value of production, and the implicit price deflator for output for these industries are available upon request by calling the Division of Industry Productivity Studies (202–691–5618) or by sending a request by email to *dipsweb@bls.gov.*

[112] See Bureau of Economic Analysis, Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II), U.S. Department of Commerce (1992).

DOE estimated indirect national employment impacts for the standard levels considered in this NOPR using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 3.1.1 (ImSET).[113] ImSET is a special-purpose version of the "U.S. Benchmark National Input-Output" (I–O) model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among 187 sectors most relevant to industrial, commercial, and residential building energy use.

DOE notes that ImSET is not a general equilibrium forecasting model, and understands the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run for this rule. Therefore, DOE generated results for near-term timeframes, where these uncertainties are reduced. For more details on the employment impact analysis, see chapter 16 of the NOPR TSD.

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for compressors. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for compressors, and the standards levels that DOE is proposing to adopt in this NOPR. Additional details regarding DOE's analyses are contained in the NOPR TSD supporting this document.

A. Trial Standard Levels

DOE analyzed the benefits and burdens of six TSLs for compressors. These TSLs were developed by combining specific efficiency levels for each of the equipment classes analyzed by DOE. Table V.1 presents the TSLs and the corresponding efficiency levels for compressors. DOE presents the results for the TSLs in this document, while the results for all efficiency levels that DOE analyzed are in the NOPR TSD.

For the rotary lubricated equipment classes, the TSLs increase directly with the analyzed ELs, from EL 1 through max-tech (EL 6). TSL 3 is of significance for these equipment classes because it represents a combination of efficiency levels that are equivalent to the draft EU second tier minimum energy efficiency requirement for rotary lubricated compressors.[114]

For rotary lubricant-free equipment classes, DOE evaluated an efficiency levels at the baseline for TSLs 1 through 5. This equipment exhibits low potential for national energy savings, which is demonstrated at TSL 6, the max-tech TSL for lubricant free equipment. At this TSL, the equipment contributes 0.1 quad of energy savings, which is less than 5-percent of the total energy savings for the TSL. Low potential national energy savings were compounded by significant burden to manufacturers at this TSL. Complete economic results for lubricant free equipment are discussed further in section V.B of this document and the TSD.

At the "new standards at baseline" efficiency level for rotary lubricant-free equipment classes, which is evaluated in TSLs 1 through 5, DOE analyzed the impacts of establishing new standards for this equipment at the baseline efficiency levels discussed and established in section IV.C.5 of this document and chapter 5 of the NOPR TSD. In a "new standards at baseline" scenario, DOE expects no impacts to the end user and no product redesign or capital conversion costs to the manufacturing industry. DOE accounts for the testing and compliance costs encountered by the manufacturers of this equipment in the MIA. These costs are reflected in the results presented in section V.B.2 of this document.

DOE notes that the "new standards at baseline" scenario will not result in national energy savings that can be captured in the NIA. A standard at baseline will, however, prevent potential new, less efficient equipment from the entering the market and potentially increasing future national energy consumption. As discussed previously, the burdens on the manufacturing industry that result from such a standard are assessed in the MIA.

For reciprocating equipment classes, the NPV of consumer benefits was negligible or negative for at least one of the classes[115] at all efficiency levels; as such, DOE chose not to evaluate new standards for this equipment in TSLs 1 through 5, and evaluated new standards only at TSL 6, the max-tech level. Complete economic results for reciprocating compressors are discussed further in section V.B, and chapters eight and ten of the NOPR TSD.

DOE notes that unlike rotary lubricant free, DOE did not evaluate a "new standards at baseline" scenario for its reciprocating TSLs. DOE determined that a standard, regardless of level, would not be economically justified because of the significant testing and compliance burdens encountered by the manufacturers of this equipment. Unlike rotary lubricant free, the overwhelming majority of reciprocating compressors in the market do not currently make public representation of efficiency, nor are they currently tested for efficiency. As such, many manufacturers in the reciprocating industry expressed concern over the availability and cost of third party test labs. These concerns were discussed in detail in section IV.J.3.e. Furthermore, DOE estimated that compared to rotary lubricant free, there are significantly more reciprocating basic models in the market. This results in significantly higher estimated industry testing and compliance cost for reciprocating versus rotary lubricant free; $30.7 versus $2.2 million, respectively. These estimates are detailed in section IV.J.2.b.i. In addition, whereas DOE is aware of only 1 domestic small manufacturer of rotary lubricant free compressors (out of seven total), DOE is aware of 13 domestic small manufacturers of reciprocating compressors (out of 33 total). Assuming equal distribution of basic models per manufacturer, this equates to $0.93 million in testing and compliance costs per reciprocating manufacturer (including small manufacturers), versus $0.32 million per rotary lubricant free manufacturer.

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[113] J.M. Roop, M.J. Scott, and R.W. Schultz, *ImSET 3.1: Impact of Sector Energy Technologies,* PNNL–18412, Pacific Northwest National Laboratory (2009) (Available at: *www.pnl.gov/main/publications/external/technical_reports/PNNL-18412.pdf*).

[114] For more information regarding the draft regulation see: *http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0040-0031.*

[115] When developing TSLs for reciprocating compressors, DOE tied the efficiency levels of single-phase and three-phase equipment classes together to avoid potential unnecessary market impacts. Single- and three-phase reciprocating equipment are typically identical, except for their motor; any changes made to one equipment class will be pass through to the other. A standard established at disparate ELs would essentially result in economic impacts similar to the case where both equipment class are tied together at the higher EL. As such, DOE found it appropriate to tie the efficiency levels together when developing TSLs.

When DOE proposes to adopt a new standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(p)(1) and 6316(a)) As discussed above, TSL 6 reflects that max-tech level for all product classes.

TABLE V.1—TRIAL STANDARD LEVEL TO EFFICIENCY LEVEL MAPPING

Equipment class (EC)	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
RP_FS_L_AC	EL 1	EL 2	EL 3	EL 4	EL 5	EL 6
RP_FS_L_WC	EL 1	EL 2	EL 3	EL 4	EL 5	EL 6
RP_FS_LF_AC	*EL 0	*EL 0	*EL 0	*EL 0	*EL 0	EL 6
RP_FS_LF_WC	*EL 0	*EL 0	*EL 0	*EL 0	*EL 0	EL 6
RP_VS_L_AC	EL 1	EL 2	EL 3	EL 4	EL 5	EL 6
RP_VS_L_WC	EL 1	EL 2	EL 3	EL 4	EL 5	EL 6
RP_VS_LF_AC	*EL 0	*EL 0	*EL 0	*EL 0	*EL 0	EL 6
RP_VS_LF_WC	*EL 0	*EL 0	*EL 0	*EL 0	*EL 0	EL 6
R1_FS_L_XX	**EL 0	**EL 0	**EL 0	**EL 0	**EL 0	EL 6
R3_FS_L_XX	**EL 0	**EL 0	**EL 0	**EL 0	**EL 0	EL 6

*For the RP_FS_LF_AC, RP_FS_LF_WC, RP_VS_LF_AC, and RP_VS_LF_WC equipment classes, EL 0 represents a scenario in which a standard is set at the baseline efficiency level.

**For R1_FS_L_XX, and R3_FS_L_XX, EL 0 represents a scenario in which no new standards are established.

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on compressor consumers by looking at the effects potential standards at each TSL would have on the LCC and PBP. DOE also examined the impacts of potential standards on consumer subgroups. These analyses are discussed below.

a. Life-Cycle Cost and Payback Period

In general, higher-efficiency equipment affect consumers in two ways: (1) Purchase price increases, and (2) annual operating costs decrease. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.*, product price plus installation costs), and operating costs (*i.e.*, annual energy use, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses equipment lifetime and a discount rate. Chapter 8 of the NOPR TSD provides detailed information on the LCC and PBP analyses.

Table V.2 through Table V.21 show the LCC and PBP results for the TSL efficiency levels considered for each compressor equipment class. In the first of each pair of tables, the simple payback is measured relative to the baseline equipment (EL 0). In the second table, the impacts are measured relative to the efficiency distribution in the no-new-standards case in the compliance year (see section IV.F.8 of this document). Because some consumers purchase equipment with higher efficiency in the no-new-standards case, the average savings are less than the difference between the average LCC of EL 0 and the average LCC at each TSL. The savings refer only to consumers who are affected by a standard at a given TSL. Those who already purchase equipment with efficiency at or above a given TSL are not affected. Consumers for whom the LCC increases at a given TSL experience a net cost.

TABLE V.2—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR ROTARY, FIXED-SPEED, LUBRICATED, AIR-COOLED COMPRESSORS

[RP_FS_L_AC]

TSL	EL	Average costs (2015$)				Simple payback *(years)*	Average Lifetime *(years)*
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	$14,808	$11,280	$88,269	$103,077		11.8
1	1	15,022	11,115	87,028	102,050	1.3	11.8
2	2	15,494	10,877	85,202	100,696	1.7	11.8
3	3	16,379	10,547	82,673	99,052	2.1	11.8
4	4	16,842	10,405	81,582	98,424	2.3	11.8
5	5	17,725	10,165	79,732	97,457	2.6	11.8
6	6	20,399	9,586	75,253	95,652	3.3	11.8

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline (EL 0) equipment.

TABLE V.3—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR ROTARY, FIXED-SPEED, LUBRICATED, AIR-COOLED COMPRESSORS

[RP_FS_L_AC]

TSL	EL	Life-cycle cost savings	
		% of consumers that experience (net cost)	Average savings* (2015$)
1	1	0	$9,056
2	2	0	8,902
3	3	1	9,443
4	4	3	7,579
5	5	5	7,748
6	6	14	7,817

* The savings represent the average LCC for affected consumers.

TABLE V.4—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR ROTARY, FIXED-SPEED, LUBRICATED, WATER-COOLED COMPRESSORS

[RP_FS_L_WC]

TSL	EL	Average costs (2015$)				Simple payback (years)	Average Lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	$37,958	$29,953	$248,854	$286,813		12.8
1	1	38,504	29,685	246,653	285,157	2.0	12.8
2	2	39,658	29,250	243,055	282,713	2.4	12.8
3	3	41,699	28,622	237,909	279,608	2.8	12.8
4	4	42,752	28,340	235,590	278,342	3.0	12.8
5	5	44,716	27,856	231,614	276,330	3.2	12.8
6	6	50,482	26,644	221,619	272,101	3.8	12.8

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline (EL 0) equipment.

TABLE V.5—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR ROTARY, FIXED-SPEED, LUBRICATED, WATER-COOLED COMPRESSORS

[RP_FS_L_WC]

TSL	EL	Life-cycle cost savings	
		% of consumers that experience (net cost)	Average savings* (2015$)
1	1	0	$14,396
2	2	1	15,011
3	3	3	16,538
4	4	5	13,649
5	5	7	14,397
6	6	15	15,512

* The savings represent the average LCC for affected consumers.

TABLE V.6—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR ROTARY, FIXED-SPEED, LUBRICANT FREE, AIR-COOLED COMPRESSORS

[RP_FS_LF_AC]

TSL	EL	Average costs (2015$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	$88,182	$21,714	$177,081	$265,263	n.a.	12.5
1	0	88,182	21,714	177,081	265,263	n.a.	12.5
2	0	88,182	21,714	177,081	265,263	n.a.	12.5

TABLE V.6—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR ROTARY, FIXED-SPEED, LUBRICANT FREE, AIR-COOLED COMPRESSORS—Continued

[RP_FS_LF_AC]

TSL	EL	Average costs (2015$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
3	0	88,182	21,714	177,081	265,263	n.a.	12.5
4	0	88,182	21,714	177,081	265,263	n.a.	12.5
5	0	88,182	21,714	177,081	265,263	n.a.	12.5
6	6	92,064	20,622	168,270	260,334	3.6	12.5

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline (EL 0) equipment.

TABLE V.7—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR ROTARY, FIXED-SPEED, LUBRICANT FREE, AIR-COOLED COMPRESSORS

[RP_FS_LF_AC]

TSL	EL	Life-cycle cost savings	
		% of consumers that experience (net cost)	Average savings* (2015$)
1	0	n.a.	n.a.
2	0	n.a.	n.a.
3	0	n.a.	n.a.
4	0	n.a.	n.a.
5	0	n.a.	n.a.
6	6	8	$5,182

Note: n.a. indicates that there is no increased in efficiency in the proposed standards case, therefore there are no LCC Savings or Simple Payback.

* The savings represent the average LCC for affected consumers.

TABLE V.8—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR ROTARY, FIXED-SPEED, LUBRICANT FREE, WATER-COOLED COMPRESSORS

[RP_FS_LF_WC]

TSL	EL	Average costs (2015$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	$103,931	$29,608	$246,435	$350,366	n.a.	13.0
1	0	103,931	29,608	246,435	350,366	n.a.	13.0
2	0	103,931	29,608	246,435	350,366	n.a.	13.0
3	0	103,931	29,608	246,435	350,366	n.a.	13.0
4	0	103,931	29,608	246,435	350,366	n.a.	13.0
5	0	103,931	29,608	246,435	350,366	n.a.	13.0
6	6	109,110	28,324	235,882	344,992	4.0	13.0

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline (EL 0) equipment.

"n.a." indicates that there is no increased in efficiency in the proposed standards case, therefore there are no LCC Savings or Simple Payback.

TABLE V.9—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR ROTARY, FIXED-SPEED, LUBRICANT FREE, WATER-COOLED COMPRESSORS

[RP_FS_LF_WC]

TSL	EL	Life-cycle cost savings	
		% of consumers that experience (net cost)	Average savings* (2015$)
1	0	n.a.	n.a.

TABLE V.9—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR ROTARY, FIXED-SPEED, LUBRICANT FREE, WATER-COOLED COMPRESSORS—Continued

[RP_FS_LF_WC]

TSL	EL	Life-cycle cost savings	
		% of consumers that experience (net cost)	Average savings* (2015$)
2	0	n.a.	n.a.
3	0	n.a.	n.a.
4	0	n.a.	n.a.
5	0	n.a.	n.a.
6	6	10	$5,686

Note: n.a. indicates that there is no increased in efficiency in the proposed standards case, therefore there are no LCC Savings or Simple Payback.

* The savings represent the average LCC for affected consumers.

TABLE V.10—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR ROTARY, VARIABLE-SPEED, LUBRICATED, AIR-COOLED COMPRESSORS

[RP_VS_L_AC]

TSL	EL	Average costs 2015$				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	$24,181	$12,574	$97,620	$121,801		11.8
1	1	24,398	12,473	96,845	121,243	2.1	11.8
2	2	24,981	12,258	95,215	120,196	2.5	11.8
3	3	26,025	11,955	92,920	118,945	3.0	11.8
4	4	26,843	11,757	91,415	118,258	3.3	11.8
5	5	28,864	11,344	88,263	117,128	3.8	11.8
6	6	34,034	10,559	82,265	116,299	4.9	11.8

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline (EL 0) equipment.

"n.a." indicates that there is no increased in efficiency in the proposed standards case, therefore there are no LCC Savings or Simple Payback.

TABLE V.11—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR ROTARY, VARIABLE-SPEED, LUBRICATED, AIR-COOLED COMPRESSORS

[RP_VS_L_AC]

TSL	EL	Life-cycle cost savings	
		% of consumers that experience (net cost)	Average savings* (2015$)
1	1	0	$5,073
2	2	1	6,061
3	3	4	6,746
4	4	8	5,732
5	5	13	6,408
6	6	31	5,784

* The savings represent the average LCC for affected consumers.

Table V.12—Average LCC and PBP Results by Efficiency Level for Rotary, Variable-Speed, Lubricated, Water-Cooled Compressors

(RPp_VS_L_WC)

TSL	EL	Average costs 2015$				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	$61,242	$31,544	$259,506	$320,748	....	13.0
1	1	61,990	31,281	257,385	319,375	2.8	13.0
2	2	64,077	30,717	252,831	316,908	3.4	13.0
3	3	67,766	29,945	246,533	314,299	4.1	13.0
4	4	69,662	29,605	243,752	313,414	4.3	13.0
5	5	74,247	28,872	237,732	311,979	4.9	13.0
6	6	86,230	27,315	224,949	311,179	5.9	13.0

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline (EL 0) equipment.

Table V.13—Average LCC Savings Relative to the No-New-Standards Case for Rotary, Variable-Speed, Lubricated, Water-Cooled Compressors

[RP_VS_L_WC]

TSL	EL	Life-cycle cost savings	
		% of consumers that experience (net cost)	Average savings* (2015$)
1	1	1	$12,017
2	2	3	13,865
3	3	8	14,922
4	4	14	11,996
5	5	21	12,055
6	6	40	10,082

* The savings represent the average LCC for affected consumers.

Table V.14—Average LCC and PBP Results by Efficiency Level for Rotary, Variable-Speed, Lubricant-Free, Air-Cooled Compressors

[RP_VS_lf_ac]

TSL	EL	Average costs (2015$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	$115,579	$29,125	$238,450	$354,029	n.a.	13.0
1	0	115,579	29,125	238,450	354,029	n.a.	13.0
2	0	115,579	29,125	238,450	354,029	n.a.	13.0
3	0	115,579	29,125	238,450	354,029	n.a.	13.0
4	0	115,579	29,125	238,450	354,029	n.a.	13.0
5	0	115,579	29,125	238,450	354,029	n.a.	13.0
6	6	121,730	27,060	221,747	343,478	3.0	13.0

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline (EL 0) equipment.

" n.a." indicates that there is no increased in efficiency in the proposed standards case, therefore there are no LCC Savings or Simple Payback.

TABLE V.15—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR ROTARY, VARIABLE-SPEED, LUBRICANT-FREE, AIR-COOLED COMPRESSORS

[RP_VS_Lf_AC]

TSL	EL	Life-cycle cost savings	
		% of consumers that experience (net cost)	Average savings * (2015$)
1	0	n.a.	n.a.
2	0	n.a.	n.a.
3	0	n.a.	n.a.
4	0	n.a.	n.a.
5	0	n.a.	n.a.
6	6	6	$11,104

Note: n.a. indicates that there is no increased in efficiency in the proposed standards case, therefore there are no LCC Savings or Simple Payback.

* The calculation excludes households with zero LCC savings (no impact).

TABLE V.16—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR ROTARY, VARIABLE-SPEED, LUBRICANT-FREE, WATER-COOLED COMPRESSORS

[RP_VS_LF_WC]

TSL	EL	Average costs (2015$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	$93,159	$19,555	$155,255	$248,414	n.a.	12.2
1	0	93,159	19,555	155,255	248,414	n.a.	12.2
2	0	93,159	19,555	155,255	248,414	n.a.	12.2
3	0	93,159	19,555	155,255	248,414	n.a.	12.2
4	0	93,159	19,555	155,255	248,414	n.a.	12.2
5	0	93,159	19,555	155,255	248,414	n.a.	12.2
6	6	97,524	17,922	142,583	240,107	2.7	12.2

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline (EL 0) equipment.

"n.a." indicates that there is no increased in efficiency in the proposed standards case, therefore there are no LCC Savings or Simple Payback.

TABLE V.17—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR ROTARY, VARIABLE-SPEED, LUBRICANT-FREE, WATER-COOLED COMPRESSORS

[RP_VS_LFf_WC]

TSL	EL	Life-cycle cost savings	
		% of consumers that experience (net cost)	Average savings * (2015$)
1	0	n.a.	n.a.
2	0	n.a.	n.a.
3	0	n.a.	n.a.
4	0	n.a.	n.a.
5	0	n.a.	n.a.
6	6	5	$8,748

Note: n.a. indicates that there is no increased in efficiency in the proposed standards case, therefore there are no LCC Savings or Simple Payback.

* The calculation excludes households with zero LCC savings (no impact).

TABLE V.18—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR RECIPROCATING, SINGLE-PHASE, FIXED-SPEED, LUBRICATED COMPRESSORS

[R1_FS_L_XX]

TSL	EL	Average costs (2015$)				Simple payback *(years)*	Average lifetime *(years)*
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	$1,281	$240	$1,606	$2,888	n.a.	9.5
1	0	1,281	240	1,606	2,888	n.a.	9.5
2	0	1,281	240	1,606	2,888	n.a.	9.5
3	0	1,281	240	1,606	2,888	n.a.	9.5
4	0	1,281	240	1,606	2,888	n.a.	9.5
5	0	1,281	240	1,606	2,888	n.a.	9.5
6	6	2,209	139	946	3,155	9.2	9.5

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline (EL 0) equipment.

"n.a." indicates that there is no increased in efficiency in the proposed standards case, therefore there are no LCC Savings or Simple Payback.

TABLE V.19—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR RECIPROCATING, SINGLE-PHASE, FIXED-SPEED, LUBRICATED COMPRESSORS

[R1_FS_L_XX]

TSL	EL	Life-cycle cost savings	
		% of consumers that experience (net cost)	Average savings * (2015$)
1	0	n.a.	n.a.
2	0	n.a.	n.a.
3	0	n.a.	n.a.
4	0	n.a.	n.a.
5	0	n.a.	n.a.
6	6	78	−$282

Note: n.a. indicates that there is no increased in efficiency in the proposed standards case, therefore there are no LCC Savings or Simple Payback.

* The calculation excludes households with zero LCC savings (no impact).

TABLE V.20—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR RECIPROCATING, THREE-PHASE, FIXED-SPEED, LUBRICATED COMPRESSORS

[R3_FS_L_XX]

TSL	EL	Average costs (2015$)				Simple payback *(years)*	Average lifetime *(years)*
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	$2,200	$406	$2,997	$5,197	n.a.	9.8
1	0	2,200	406	2,997	5,197	n.a.	9.8
2	0	2,200	406	2,997	5,197	n.a.	9.8
3	0	2,200	406	2,997	5,197	n.a.	9.8
4	0	2,200	406	2,997	5,197	n.a.	9.8
5	0	2,200	406	2,997	5,197	n.a.	9.8
6	6	3,802	274	2,055	5,857	12.1	9.8

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline (EL 0) equipment.

"n.a." indicates that there is no increased in efficiency in the proposed standards case, therefore there are no LCC Savings or Simple Payback.

TABLE V.21—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR RECIPROCATING, THREE-PHASE, FIXED-SPEED, LUBRICATED COMPRESSORS

[RP_FS_L_XX]

TSL	EL	Life-cycle cost savings	
		% of consumers that experience (net cost)	Average savings * (2015$)
1	0	n.a.	n.a.
2	0	n.a.	n.a.
3	0	n.a.	n.a.
4	0	n.a.	n.a.
5	0	n.a.	n.a.
6	6	83	−$693

* The calculation excludes households with zero LCC savings (no impact).

* n.a. indicates that there is no increased in efficiency in the proposed standards case, therefore there are no LCC Savings or Simple Payback.

b. Consumer Subgroup Analysis

In the consumer subgroup analysis, described in section IV.I of this document, DOE estimated the impact of the considered TSLs on small businesses that purchase compressors. Table V.22 and Table V.23 compares the average LCC savings and PBP at each efficiency level for the "small business" consumer subgroup, along with the average LCC savings for the entire sample. In most cases, the average LCC savings and PBP for the small business consumer subgroup at the considered efficiency levels are not substantially different from the average for all consumers. Chapter 11 of the NOPR TSD presents the complete LCC and PBP results for the subgroups.

TABLE V.22—COMPARISON OF LCC SAVINGS FOR THE SMALL BUSINESS SUBGROUP AND ALL CONSUMERS

Equipment class	Scenario	Average life-cycle cost savings (2015$)					
		TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
RP_FS_L_AC	All Consumers	$9,056	$8,902	$9,443	$7,579	$7,748	$7,817
	Small Businesses	7,837	7,577	7,939	6,341	6,421	6,309
RP_FS_L_WC	All Consumers	14,396	15,011	16,538	13,649	14,397	15,512
	Small Businesses	12,046	12,498	13,601	11,160	11,677	12,194
RP_FS_LF_AC	All Consumers	n.a.	n.a.	n.a.	n.a.	n.a.	5,182
	Small Businesses	n.a.	n.a.	n.a.	n.a.	n.a.	4,098
RP_FS_LF_WC	All Consumers	n.a.	n.a.	n.a.	n.a.	n.a.	5,686
	Small Businesses	n.a.	n.a.	n.a.	n.a.	n.a.	4,386
RP_VS_L_AC	All Consumers	5,073	6,061	6,746	5,732	6,408	5,784
	Small Businesses	4,438	5,141	5,591	4,703	5,108	4,181
RP_VS_L_WC	All Consumers	12,017	13,865	14,922	11,996	12,055	10,082
	Small Businesses	9,975	11,269	11,717	9,253	8,841	6,130
RP_VS_LF_AC	All Consumers	n.a.	n.a.	n.a.	n.a.	n.a.	11,104
	Small Businesses	n.a.	n.a.	n.a.	n.a.	n.a.	9,185
RP_VS_LF_WC	All Consumers	n.a.	n.a.	n.a.	n.a.	n.a.	8,748
	Small Businesses	n.a.	n.a.	n.a.	n.a.	n.a.	7,317
R1_FS_L_XX	All Consumers	n.a.	n.a.	n.a.	n.a.	n.a.	(282)
	Small Businesses	n.a.	n.a.	n.a.	n.a.	n.a.	(332)
R3_FS_L_XX	All Consumers	n.a.	n.a.	n.a.	n.a.	n.a.	(693)
	Small Businesses	n.a.	n.a.	n.a.	n.a.	n.a.	(790)

* n.a. indicates that there is no increased in efficiency in the proposed standards case, therefore there are no LCC Savings or Simple Payback.

TABLE V.23—COMPARISON OF SIMPLE PAYBACK PERIOD FOR THE SMALL BUSINESS SUBGROUP AND ALL CONSUMERS

Equipment class	Scenario	Average simple payback period (years)					
		TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
RP_FS_L_AC	All Consumers	1.3	1.7	2.1	2.3	2.6	3.3
	Small Businesses	1.3	1.7	2.2	2.4	2.7	3.3
RP_FS_L_WC	All Consumers	2.0	2.4	2.8	3.0	3.2	3.8
	Small Businesses	2.0	2.4	2.8	3.0	3.2	3.8
RP_FS_LF_AC	All Consumers	n.a.	n.a.	n.a.	n.a.	n.a.	3.6
	Small Businesses	n.a.	n.a.	n.a.	n.a.	n.a.	3.6
RP_FS_LF_WC	All Consumers	n.a.	n.a.	n.a.	n.a.	n.a.	4.0
	Small Businesses	n.a.	n.a.	n.a.	n.a.	n.a.	4.0
RP_VS_L_AC	All Consumers	2.1	2.5	3.0	3.3	3.8	4.9

TABLE V.23—COMPARISON OF SIMPLE PAYBACK PERIOD FOR THE SMALL BUSINESS SUBGROUP AND ALL CONSUMERS—Continued

Equipment class	Scenario	Average simple payback period (years)					
		TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
	Small Businesses	2.1	2.5	3.0	3.3	3.8	4.9
RP_VS_L_WC	All Consumers	2.8	3.4	4.1	4.3	4.9	5.9
	Small Businesses	2.9	3.5	4.1	4.4	4.9	5.9
RP_VS_LF_AC	All Consumers	n.a.	n.a.	n.a.	n.a.	n.a.	3.0
	Small Businesses	n.a.	n.a.	n.a.	n.a.	n.a.	3.0
RP_VS_LF_WC	All Consumers	n.a.	n.a.	n.a.	n.a.	n.a.	2.7
	Small Businesses	n.a.	n.a.	n.a.	n.a.	n.a.	2.7
R1_FS_L_XX	All Consumers	n.a.	n.a.	n.a.	n.a.	n.a.	9.2
	Small Businesses	n.a.	n.a.	n.a.	n.a.	n.a.	9.2
R3_FS_L_XX	All Consumers	n.a.	n.a.	n.a.	n.a.	n.a.	12.1
	Small Businesses	n.a.	n.a.	n.a.	n.a.	n.a.	12.2

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline (EL 0) equipment.
* n.a. indicates that there is no increased in efficiency in the proposed standards case, therefore there are no LCC Savings or Simple Payback.

c. Rebuttable Presumption Payback

As discussed in section III.G.2, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for equipment that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. In calculating a rebuttable presumption payback period for each of the considered TSLs, DOE used discrete values, and, as required by EPCA, based the energy use calculation on the DOE test procedure for compressors. In contrast, the PBPs presented in section V.B.1.a were calculated using distributions for input values, with energy use based on the methodology described in section IV.E.

Notwithstanding this more limited analysis, DOE routinely conducts a full economic analysis that considers the full range of impacts to the consumer, manufacturer, Nation, and environment. See 42 U.S.C. 6295(o)(2)(B)(i) and 6316(a). The results of that analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification. Table V.24 shows the rebuttable presumption PBPs for the considered TSLs for the considered compressors equipment classes.

TABLE V.24—REBUTTABLE PRESUMPTION PAYBACK PERIODS BY TSL

Equipment class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
RP_FS_L_AC	1.1	1.5	1.9	2.0	2.3	2.8
RP_FS_L_WC	1.7	2.0	2.4	2.5	2.7	3.2
RP_FS_LF_AC	n.a.	n.a.	n.a.	n.a.	n.a.	3.0
RP_FS_LF_WC	n.a.	n.a.	n.a.	n.a.	n.a.	3.4
RP_VS_L_AC	2.3	2.8	3.3	3.6	4.2	5.4
RP_VS_L_WC	3.2	3.8	4.5	4.8	5.4	6.5
RP_VS_LF_AC	n.a.	n.a.	n.a.	n.a.	n.a.	3.3
RP_VS_LF_WC	n.a.	n.a.	n.a.	n.a.	n.a.	3.0
R1_FS_L_XX	n.a.	n.a.	n.a.	n.a.	n.a.	7.2
R3_FS_L_XX	n.a.	n.a.	n.a.	n.a.	n.a.	9.4

Note: "n.a." indicates that there is no increased in efficiency in the proposed standards case, therefore there are no LCC Savings or Simple Payback.

2. Economic Impacts on Manufacturers

As noted previously, DOE performed an MIA to estimate the impact of energy conservation standards on manufacturers of compressors. The following section summarizes the expected impacts on manufacturers at each considered TSL. Chapter 12 of the NOPR TSD explains the analysis in further detail.

a. Industry Cash Flow Analysis Results

Table V.25 depicts the estimated financial impacts (represented by changes in industry net present value, or INPV) of amended energy conservation standards on manufacturers of compressors, as well as the conversion costs that DOE expects manufacturers would incur for all equipment classes at each TSL. DOE notes that the GRIM and resulting industry cash flow analysis considered only rotary equipment classes, as DOE is proposing not to establish standards for reciprocating equipment. For further discussion on DOE's proposal for reciprocating compressors, see section V.C.

As discussed in section IV.J.2, DOE modeled two different conversion cost scenarios to evaluate the range of cash flow impacts on the compressor industry: (1) A low conversion cost scenario; and (2) a high conversion cost scenario.

The low conversion cost scenario assumes that manufacturers active in the EU market will not face additional product conversion costs to adapt to a U.S. standard that is at or below the draft EU level (EL 3 and TSL 3). If the U.S. standard is above the draft EU level, these manufacturers would still incur full redesign costs. In the high conversion cost scenario, all manufacturers face full product conversion costs, regardless of an EU regulation. DOE notes that these scenarios only impact lubricated rotary equipment, as lubricant-free rotary equipment is not proposed for coverage in the EU. Each of the conversion cost scenarios result in a unique set of cash flows and corresponding industry values at each TSL.

In the following discussion, the INPV results refer to the difference in industry value between the base case "business as usual" and each standards case resulting from the sum of discounted cash flows from the base year (2015) through the end of the analysis period (2051). To provide perspective on the short-run cash flow impact, DOE includes in the discussion of results a comparison of free cash flow between the no-standards case and the standards case at each TSL in the year before amended standards would take effect. This figure provides an understanding of the magnitude of required conversion costs relative to cash flows generated by the industry in the base case.

Table V.25 and Table V.26 present INPV results under the low and high conversion cost scenarios. The low conversion cost scenario represents the least severe set of impacts while the high conversion cost scenario represents the most severe sets of impacts. Markups do not vary with conversion cost scenario.

TABLE V.25—MANUFACTURER IMPACT ANALYSIS RESULTS FOR COMPRESSORS: LOW CONVERSION COST SCENARIO

	Units	No new standard case	Trial standard level*					
			1	2	3	4	5	6
INPV	2014$M	497.1	480.4	451.9	385.7	301.8	256.0	105.3
Change in INPV	2014$M		(16.7)	(45.2)	(111.4)	(195.3)	(241.1)	(391.8)
	%		(3.4)	(9.1)	(22.4)	(39.3)	(48.5)	(78.8)
Product Conversion Costs	2014$M		29.2	70.3	157.1	281.5	345.9	548.8
Capital Conversion Costs	2014$M		7.6	28.7	72.9	92.4	112.7	181.3
Total Conversion Costs	2014$M		36.8	99.1	230.0	373.9	458.6	730.1
Free Cash Flow	2014$M	33.0	19.9	(3.2)	(57.1)	(120.7)	(158.2)	(278.6)
	%Change		(39.7)	(109.7)	(273.1)	(465.9)	(579.7)	(944.5)

* Parentheses indicate negative values.

TABLE V.26—MANUFACTURER IMPACT ANALYSIS RESULTS FOR COMPRESSORS: HIGH CONVERSION COST SCENARIO

	Units	No new standard case	Trial standard level*					
			1	2	3	4	5	6
INPV	2014$M	497.1	476.8	439.3	345.8	301.8	256.0	105.3
Change in INPV	2014$M		(20.3)	(57.8)	(151.3)	(195.3)	(241.1)	(391.8)
	%		(4.1)	(11.6)	(30.4)	(39.3)	(48.5)	(78.8)
Product Conversion Costs	2014$M		36.6	96.4	222.7	281.5	345.9	548.8
Capital Conversion Costs	2014$M		7.6	28.7	72.9	92.4	112.7	181.3
Total Conversion Costs	2014$M		44.3	125.2	295.6	373.9	458.6	730.1
Free Cash Flow	2014$M	33.0	17.4	(11.8)	(86.0)	(120.7)	(158.2)	(278.6)
	%Change		(47.1)	(135.9)	(360.7)	(465.9)	(579.7)	(944.5)

* Parentheses indicate negative values.

At TSL 1, DOE estimates the impacts on INPV to range from −$20.3 million to −$16.7 million, or a change of −4.1 to −3.4 percent. Industry free cash flow is estimated to decrease by $13.1 to $15.5 million, or a change of −47.1 to −39.7 percent compared to the base case value of $33.0 million in the year before the compliance date (2021).[116] DOE estimates industry conversion costs of $36.8 to 44.3 million at TSL 1.

At TSL 2, DOE estimates impacts on INPV to range from −$57.8 million to −$45.2 million, or a change in INPV of −11.6 percent to −9.1 percent. At this level, industry free cash flow is estimated to decrease by $36.2 to 44.8 million, or a change of −135.9 to −109.7 percent compared to the base case value of $33.0 million in the year before the compliance date (2021). DOE estimates industry conversion costs of $99.1 to 125.2 million at TSL 2.

At TSL 3, DOE estimates impacts on INPV to range from −$151.3 to −$111.4 million, or a change in INPV of −30.4 to −22.4 percent. At this level, industry free cash flow is estimated to decrease by $90.1 to 119.0 million, or a change of −360.7 to −273.1 percent compared to the base case value of $33.0 million in the year before the compliance date (2021). DOE estimates industry conversion costs of $230.0 to 295.6 million at TSL 3.

At TSL 4, DOE estimates impacts on INPV of −$195.3 million, or a change in INPV of −39.3 percent. At this level, industry free cash flow is estimated to decrease by $153.7 million, or a change of 465.9 percent compared to the base case value of $33.0 million in the year before the compliance date (2021). DOE estimates industry conversion costs of $373.9 million at TSL 4.

At TSL 5, DOE estimates impacts on INPV of −$241.1 million, or a change in INPV of −48.5 percent. Industry free cash flow is estimated to decrease by $191.2 million, or a change of −579.7 percent compared to the base case value of $33.0 million in the year before the compliance date (2021). DOE estimates industry conversion costs of $458.6 million at TSL 5.

At TSL 6, DOE estimates impacts on INPV of −$391.8 million, or a change in INPV of −78.8 percent. Industry free cash flow is estimated to decrease by $311.6 million, or a change of −944.5 percent compared to the base case value of $33.0 million in the year before the compliance date (2021). DOE estimates industry conversion costs of $730.1 million at TSL 6.

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[116] As noted previously, DOE estimates that a Final Rule will publish in late 2016, and compliance would be required starting in late 2021. As such, DOE's analysis begins in the first full year of compliance with new standards, 2022. So for the purposes of DOE's analysis, 2021 is considered the year before the compliance date.

b. Impacts on Employment

To quantitatively assess the potential impacts of energy conservation standards on direct employment, DOE used the GRIM to estimate the domestic labor expenditures and number of direct employees in the base case and at each TSL from 2015 through 2051. DOE used statistical data from the U.S. Census Bureau's 2013 Annual Survey of Manufacturers,[117] the results of the engineering analysis, and interviews with manufacturers to determine the inputs necessary to calculate industry-wide labor expenditures and domestic direct employment levels. Labor expenditures related to producing the equipment are a function of the labor intensity of producing the equipment, the sales volume, and an assumption that wages remain fixed in real terms over time. The total labor expenditures in each year are calculated by multiplying the MPCs by the labor percentage of MPCs. DOE estimates that 50 percent of rotary air compressors are produced domestically.

The total labor expenditures in the GRIM were then converted to domestic production employment levels by dividing production labor expenditures by the annual payment per production worker (production worker hours multiplied by the labor rate found in the U.S. Census Bureau's 2013 Annual Survey of Manufacturers). The production worker estimates in this section only cover workers up to the line-supervisor level who are directly involved in fabricating and assembling equipment within an OEM facility. Workers performing services that are closely associated with production operations, such as materials handling tasks using forklifts, are also included as production labor. DOE's estimates only account for production workers who manufacture the specific equipment covered by this rulemaking.

To estimate an upper bound to employment change, DOE assumes all domestic manufacturers would choose to continue producing equipment in the U.S. and would not move production to foreign countries. To estimate a lower bound to employment, DOE considers the case where all manufacturers choose to relocate production of failing rotary compressors under 50-hp overseas rather than make the necessary conversions at domestic production facilities. A complete description of the assumptions used to generate these upper and lower bounds can be found in chapter 12 of the NOPR TSD.

In the absence of energy conservation standards, DOE estimates that the rotary air compressors industry would employ 1,417 domestic production workers in 2022. Table V.27 shows the range of impacts of potential energy conservation standards on U.S. production workers of air compressors.

TABLE V.27—POTENTIAL CHANGES IN THE TOTAL NUMBER OF ROTARY AIR COMPRESSOR PRODUCTION WORKERS IN 2022

	Trial standard level *					
	1	2	3	4	5	6
Potential Changes in Domestic Production Workers in 2022.	(113) to 14	(179) to 45	(265) to 95	(288) to 121 ...	(345) to 169 ...	(477) to 293.

* Parentheses indicate negative values.
† No-new-standards case assumes 1,417 domestic production workers in the rotary air compressor industry in 2022.

The upper end of the range estimates the maximum increase in the estimated number of domestic production workers in the compressor industry after implementation of amended energy conservation standards. It assumes manufacturers would continue to produce the same scope of covered equipment within the United States.

The lower end of the range represents the maximum decrease in the total number of U.S. production workers that could result from an energy conservation standard. In interviews, manufacturers stated that the domestic compressor industry has seen limited migration to foreign production facilities. While many compressors are currently manufactured in foreign production facilities, this is more often the result of the global operations of many manufacturers, rather than off-shoring of former U.S. production. However, manufacturers that currently produce in the U.S. have indicated they could potentially shift some production of some covered equipment to foreign facilities in order to take advantage of lower labor costs and/or global economies of scale, if standards erode the economic benefits of manufacturing domestically. Manufacturers also stated that smaller, lower horsepower compressors, rather than larger, higher horsepower compressors, are more likely to shift to foreign production. Given the uncertainty surrounding potential off-shoring decisions, manufacturers were unable to pinpoint a specific horsepower cutoff for "lower horsepower compressors." However, based on qualitative discussions with manufacturers, DOE estimates that 50 horsepower is an appropriate cutoff to represent "lower horsepower compressors." As a result, the lower bound of direct employment impacts assumes manufacturers choose to relocate production of failing rotary compressors under 50-hp overseas rather than make the necessary conversions at domestic production facilities.

This conclusion is independent of any conclusions regarding indirect employment impacts in the broader U.S. economy, which are documented in chapter 15 of the TSD

DOE requests comments on the total annual direct employment levels in the industry. This is identified as Issue 49 in section VIII.E, "Issues on Which DOE Seeks Comment."

c. Impacts on Manufacturing Capacity

In interviews, manufacturers of compressors did not indicate that new energy conservation standards would significantly constrain manufacturing production capacity. However, as discussed in section IV.J.3.b, manufacturers expressed concern that they may face a bottleneck in the redesign process. In other words, manufacturers felt that if they could complete their redesigns within the compliance period, then they would not have a problem obtaining sufficient floor space, equipment, and manufacturing labor to meet the shipment demands of the market, following an energy conservation standard.

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[117] Annual Survey of Manufacturers: General Statistics: Statistics for Industry Groups and Industries, U.S. Census Bureau, 2011. Available at *http://www.census.gov/manufacturing/asm/index.html.*

Manufacturers indicated that most experienced compressor design engineers are already employed within the industry, which limits their ability to rapidly expand their research and development teams if faced with a high volume of required compressor redesigns. Consequently, manufacturers typically commented that standard levels at or above the equivalent of TSL 3 could cause engineering constraints which might create time delays in complying with new standards. DOE notes that manufacturers typically discussed this constraint with respect to a three-year compliance period. In this NOPR, however, DOE is proposing a standard level at TSL 2, in conjunction with a five-year compliance period.

DOE requests comment on potential bottlenecks in manufacturing capacity or constraints in engineering resources that could result from a new standard. This is identified as Issue 50 in section VIII.E, "Issues on Which DOE Seeks Comment."

d. Impacts on Subgroups of Manufacturers

As discussed previously, using average cost assumptions to develop an industry cash flow estimate is not adequate for assessing differential impacts among subgroups of manufacturers. Small manufacturers, niche players, or manufacturers exhibiting a cost structure that differs largely from the industry average could be affected differently. DOE used the results of the industry characterization to group manufacturers exhibiting similar characteristics. Specifically, DOE identified small business manufacturers as a subgroup for a separate impact analysis.

For the small business subgroup analysis, DOE applied the small business size standards published by the Small Business Administration (SBA) to determine whether a company is considered a small business. (65 FR 30840, 30849 (May 15, 2000), as amended at 65 FR 53533, 53544 (September 5, 2000), and codified at 13 CFR part 121.) To be categorized as a small business manufacturer of compressors under North American Industry Classification System (NAICS) code 333912, "Air and Gas Compressor Manufacturing," a compressor manufacturer and its affiliates may employ a maximum of 500 employees. The 500-employee threshold includes all employees in a business's parent company and any other subsidiaries. Based on this classification, DOE identified three manufacturers of rotary air compressors and thirteen manufacturers of reciprocating equipment that qualify as small businesses. The small business subgroup analysis is discussed in section VII.B of this document and in chapter 12 of the NOPR TSD.

e. Cumulative Regulatory Burden

While any one regulation may not impose a significant burden on manufacturers, the combined effects of recent or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing equipment. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

For the cumulative regulatory burden analysis, DOE looks at equipment-specific Federal regulations that could affect compressor manufacturers and with which compliance is required approximately three years before or after the 2021 compliance date of the standard proposed in this document. The Department was not able to identify any additional regulatory burdens that meet these criteria.

DOE requests comments on the cumulative regulatory burden facing compressor manufacturers. Specifically, DOE seeks input on any equipment-specific Federal regulations with which compliance is required within three years of the proposed compliance date for any final compressor standards, as well as on recommendations on how DOE may be able to align varying regulations to mitigate cumulative burden. This is identified as Issue 51 in section VIII.E, "Issues on Which DOE Seeks Comment."

3. National Impact Analysis

a. Significance of Energy Savings

To estimate the energy savings attributable to potential standards for compressors, DOE compared the energy consumption of those equipment under the no-new-standards case to their anticipated energy consumption under each TSL. The savings are measured over the entire lifetime of equipment purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2022–2051). Table V.28 present DOE's projections of the national energy savings for each TSL considered for compressors. The savings were calculated using the approach described in section IV.H of this document.

TABLE V.28—CUMULATIVE NATIONAL ENERGY SAVINGS FOR COMPRESSORS SHIPPED IN 2022–2051

	Trial standard level					
	1	2	3	4	5	6
Primary energy (quads)	0.04	0.17	0.47	0.67	1.06	4.37
FFC energy (quads)	0.04	0.18	0.49	0.70	1.11	4.57

OMB Circular A–4 [118] requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using nine, rather than 30, years of equipment shipments. The choice of a nine-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of, and compliance with, such revised standards.[119] The review timeframe established in EPCA is generally not synchronized with the equipment lifetime, equipment manufacturing cycles, or other factors specific to compressors. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES sensitivity analysis results based on a nine-year analytical period are presented in Table V.29. The impacts are counted over the lifetime of compressors purchased in 2022–2030.

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[118] U.S. Office of Management and Budget, "Circular A–4: Regulatory Analysis" (Sept. 17, 2003) (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4/*).

[119] Section 325(m) of EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may

TABLE V.29—CUMULATIVE NATIONAL ENERGY SAVINGS FOR COMPRESSORS; NINE YEARS OF SHIPMENTS (2022–2030)

	Trial standard level					
	1	2	3	4	5	6
Primary energy (quads)	0.01	0.04	0.12	0.17	0.27	1.15
FFC energy (quads)	0.01	0.05	0.13	0.18	0.28	1.20

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the TSLs considered for compressors. In accordance with OMB's guidelines on regulatory analysis,[120] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate.

Table V.30 shows the consumer NPV results for each TSL DOE considered for compressors. The impacts are counted over the lifetime of products purchased in 2022–2051.

TABLE V.30—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR COMPRESSORS SHIPPED IN 2022–2051

Discount rate	Trial standard level (billion 2015$)					
	1	2	3	4	1	6
3 percent	0.14	0.63	1.62	2.21	3.28	−4.94
7 percent	0.05	0.23	0.56	0.75	1.07	−4.71

The NPV results based on the aforementioned 9-year analytical period are presented in Table V.31. The impacts are counted over the lifetime of equipment purchased in 2022–2030. As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V.31—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR COMPRESSORS; NINE YEARS OF SHIPMENTS (2022–2030)

Discount rate	Trial standard level (billion 2015$)					
	1	2	3	4	5	6
3 percent	0.04	0.20	0.50	0.67	0.99	−2.19
7 percent	0.02	0.09	0.23	0.31	0.44	−2.32

The above results reflect the use of a default trend to estimate the change in price for compressors over the analysis period (see section IV.F.1 of this document). DOE also conducted a sensitivity analysis that considered one scenario with a lower rate of price decline than the reference case and one scenario with a higher rate of price decline than the reference case. The results of these alternative cases are presented in appendix 10B of the NOPR TSD. In the high-price-decline case, the NPV of consumer benefits is higher than in the default case. In the low-price-decline case, the NPV of consumer benefits is lower than in the default case.

c. Indirect Impacts on Employment

DOE expects energy conservation standards for compressors to reduce energy bills for consumers of those equipment, with the resulting net savings being redirected to other forms of economic activity. These expected shifts in spending and economic activity could affect the demand for labor. As described in section IV.N of this document, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered in this rulemaking. DOE understands that there are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term timeframes (2022–2027), where these uncertainties are reduced.

The results suggest that the proposed standards are likely to have a negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on

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undertake reviews at any time within the 6 year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some consumer products, the compliance period is 5 years rather than 3 years.

[120] U.S. Office of Management and Budget, "Circular A–4: Regulatory Analysis," section E, (Sept. 17, 2003) (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4/*).

employment. Chapter 16 of the NOPR TSD presents detailed results regarding anticipated indirect employment impacts.

4. Impact on Utility or Performance of Equipment

Based on testing conducted in support of this proposed rule, discussed in section IV.C.1.b of this document, DOE has tentatively concluded that the standards proposed in this NOPR would not reduce the utility or performance of the compressors under consideration in this rulemaking. This view is largely based on the fact that compressor manufacturers currently offer units that meet or exceed the proposed standards.

5. Impact of Any Lessening of Competition

As discussed in section III.G.1.e, the Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination in writing to the Secretary, together with an analysis of the nature and extent of such impact. To assist the Attorney General in making such determination, DOE has provided DOJ with copies of this NOPR and the accompanying TSD for review. DOE will consider DOJ's comments on the proposed rule in determining whether to proceed to a final rule. DOE will publish and respond to DOJ's comments in that document. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, interested members of the public may also provide comments separately to DOJ regarding these potential impacts. See the **ADDRESSES** section for information on how to send comments to DOJ.

6. Need of the Nation To Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy production. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. As a measure of this reduced demand, chapter 15 in the NOPR TSD presents the estimated reduction in generating capacity, relative to the no-new-standards case, for the TSLs that DOE considered in this rulemaking.

Energy conservation from potential standards for compressors are expected to yield environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases. Table V.32 provides DOE's estimate of cumulative emissions reductions expected to result from the TSLs considered in this rulemaking. The table includes both power sector emissions and upstream emissions. The emissions were calculated using the multipliers discussed in section IV.L. DOE reports annual emissions reductions for each TSL in chapter 13 of the NOPR TSD.

TABLE V.32—CUMULATIVE EMISSIONS REDUCTION FOR COMPRESSORS SHIPPED IN 2022–2051

	Trial standard level					
	1	2	3	4	5	6
Power Sector Emissions						
CO_2 (million metric tons)	2.1	10.0	27.6	39.1	62.0	256.5
SO_2 (thousand tons)	1.2	5.7	15.7	22.3	35.3	146.9
NO_X (thousand tons)	2.3	11.2	30.8	43.7	69.4	286.5
Hg (tons)	0.004	0.02	0.1	0.1	0.1	0.5
CH_4 (thousand tons)	0.2	0.8	2.3	3.2	5.1	21.2
N_2O (thousand tons)	0.0	0.1	0.3	0.5	0.7	3.0
Upstream Emissions						
CO_2 (million metric tons)	0.1	0.6	1.6	2.3	3.6	14.8
SO_2 (thousand tons)	0.0	0.1	0.3	0.4	0.7	2.7
NO_X (thousand tons)	1.7	8.3	22.9	32.5	51.6	211.9
Hg (tons)	0.0	0.0	0.0	0.0	0.0	0.0
CH_4 (thousand tons)	9.6	45.9	126.7	179.5	285.0	1170.9
N_2O (thousand tons)	0.0	0.0	0.0	0.0	0.0	0.1
Total FFC Emissions						
CO_2 (million metric tons)	2.2	10.6	29.2	41.3	65.6	271.3
SO_2 (thousand tons)	1.2	5.8	16.0	22.7	36.0	149.6
NO_X (thousand tons)	4.1	19.5	53.8	76.2	121.0	498.4
Hg (tons)	0.004	0.02	0.1	0.1	0.1	0.6
CH_4 (thousand tons)	9.8	46.7	128.9	182.7	290.1	1192.1
CH_4 (thousand tons CO_2eq)*	275.0	1308.7	3609.9	5116.0	8123.3	33378.7
N_2O (thousand tons)	0.0	0.1	0.3	0.5	0.8	3.1
N_2O (thousand tons CO_2eq)*	6.8	32.2	88.8	125.8	199.8	829.3

* CO_2eq is the quantity of CO_2 that would have the same global warming potential (GWP).

As part of the analysis for this proposed rule, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 and NO_X that DOE estimated for each of the considered TSLs for compressors. As discussed in section IV.L of this document, for CO_2, DOE used the most recent values for the SCC developed by an interagency process. The four sets of SCC values for CO_2 emissions reductions in 2015 resulting from that process (expressed in 2015$) are represented by $12.2/metric ton (the average value from a distribution that uses a 5-percent discount rate), $40.0/metric ton (the average value from a distribution that uses a 3-percent discount rate), $62.3/metric ton (the average value from a distribution that uses a 2.5-percent discount rate), and $117/metric ton (the 95th-percentile value from a distribution that uses a 3-percent discount rate). The values for later years are higher due to increasing damages (public health, economic and environmental) as the projected magnitude of climate change increases.

Table V.33 presents the global value of CO_2 emissions reductions at each TSL. For each of the four cases, DOE calculated a present value of the stream of annual values using the same discount rate as was used in the studies upon which the dollar-per-ton values are based. DOE calculated domestic values as a range from 7 percent to 23 percent of the global values; these results are presented in chapter 14 of the NOPR TSD.

TABLE V.33—ESTIMATES OF GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR EQUIPMENT SHIPPED IN 2022–2051

TSL	SCC case * (million 2015$)			
	5% discount rate, average	3% discount rate, average	2.5% discount rate, average	3% discount rate, 95th percentile
Power Sector Emissions				
1	13.7	64.5	103.2	196.6
2	65.1	306.8	491.0	935.4
3	179.6	846.2	1354.1	2579.7
4	254.5	1199.1	1919.0	3655.7
5	404.1	1903.8	3046.7	5803.9
6	1738.1	8071.6	12866.2	24609.9
Upstream Emissions				
1	0.8	3.7	5.9	11.3
2	3.7	17.6	28.3	53.8
3	10.3	48.6	77.9	148.3
4	14.5	68.9	110.5	210.2
5	23.1	109.4	175.4	333.7
6	98.6	461.0	735.9	1406.3
Total FFC Emissions				
1	14.5	68.2	109.1	207.9
2	68.9	324.5	519.3	989.2
3	189.9	894.8	1432.1	2728.0
4	269.1	1268.1	2029.4	3865.9
5	427.2	2013.3	3222.1	6137.7
6	1836.7	8532.6	13602.1	26016.2

* For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.2, $40.0, $62.3, and $117 per metric ton (2015$). The values are for CO_2 only (*i.e.,* not CO_{2eq} of other greenhouse gases).

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed on reduced CO_2 emissions in this rulemaking is subject to change. DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this proposed rule the most recent values and analyses resulting from the interagency review process.

DOE also estimated the cumulative monetary value of the economic benefits associated with NO_X emissions reductions anticipated to result from the considered TSLs for compressors. The dollar-per-ton values that DOE used are discussed in section IV.L of this document.

Table V.34 presents the cumulative present values for NO_X emissions for each TSL calculated using 7-percent and 3-percent discount rates. This table presents values that use the low dollar-per-ton values, which reflect DOE's primary estimate. Results that reflect the range of NO_X dollar-per-ton values are presented in Table V.36.

TABLE V.34—ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR COMPRESSORS SHIPPED IN 2022–2051

TSL	(Million 2015$)	
	3% discount rate	7% discount rate
Power Sector Emissions		
1	4.1	1.5
2	19.3	7.2
3	53.1	19.8
4	75.3	28.0
5	119.5	44.5
6	515.8	200.4
Upstream Emissions		
1	3.0	1.1
2	14.1	5.1
3	38.9	14.2
4	55.2	20.1
5	87.6	31.9

TABLE V.34—ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR COMPRESSORS SHIPPED IN 2022–2051—Continued

TSL	(Million 2015$)	
	3% discount rate	7% discount rate
6	376.0	143.0
Total FFC Emissions		
1	7.0	2.6
2	33.4	12.3
3	92.1	34.0
4	130.5	48.1
5	207.2	76.4
6	891.8	343.4

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII) and 6316(a)) No other factors were considered in this analysis.

8. Summary of National Economic Impacts

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the consumer savings calculated for each TSL considered in this rulemaking. Table V.35 presents the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced CO_2 and NO_X emissions in each of four valuation scenarios to the NPV of consumer savings calculated for each TSL considered in this rulemaking, at both a 7-percent and 3-percent discount rate. The CO_2 values used in the columns of each table correspond to the four sets of SCC values discussed above.

TABLE V.35—NET PRESENT VALUE OF CONSUMER SAVINGS COMBINED WITH PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

TSL	Consumer NPV at 3% discount rate added with: (billion 2015$)			
	SCC Case $12.2/metric ton and 3% low NO_X values	SCC Case $12.2/metric ton and 3% low NO_X values	SCC Case $12.2/metric ton and 3% low NO_X values	SCC Case $12.2/metric ton and 3% low NO_X values
1	0.2	0.2	0.3	0.4
2	0.7	1.0	1.2	1.7
3	1.9	2.6	3.1	4.4
4	2.6	3.6	4.4	6.2
5	3.9	5.5	6.7	9.6
6	−2.2	4.5	9.6	22.0
1	0.1	0.1	0.2	0.3
2	0.3	0.6	0.8	1.2
3	0.8	1.5	2.0	3.3
4	1.1	2.1	2.8	4.7
5	1.6	3.2	4.4	7.3
6	−2.5	4.2	9.2	21.6

Note: The SCC case values represent the global SCC in 2015, in 2015$, for each case.

In considering the above results, two issues are relevant. First, the national operating cost savings are domestic U.S. monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and the SCC are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of equipment shipped in 2022 to 2051. Because CO_2 emissions have a very long residence time in the atmosphere,[121] the SCC values in future years reflect future CO_2-emissions impacts that continue beyond 2100.

C. Conclusion

When considering new or amended energy conservation standards, the standards that DOE adopts for any type (or class) of covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 6316(a)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i) and 6316(a).) The new or amended standard must also result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)(B) and 6316(a).)

For this NOPR, DOE considered the impacts of new standards for compressors at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader as DOE discusses the benefits and/or burdens of each TSL, tables in this section present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers who may be disproportionately affected by a national standard and impacts on employment.

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[121] The atmospheric lifetime of CO_2 is estimated of the order of 30–95 years. Jacobson, MZ, "Correction to 'Control of fossil-fuel particulate black carbon and organic matter, possibly the most effective method of slowing global warming,'" *J. Geophys. Res.* 110. pp. D14105 (2005).

1. Benefits and Burdens of TSLs Considered for Compressor Standards

Table V.36 and Table V.37 summarize the quantitative impacts estimated for each TSL for compressors. The national impacts are measured over the lifetime of compressors purchased in the 30-year period that begins in the anticipated first full year of compliance with amended standards (2022–2051). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle results. The efficiency levels contained in each TSL are described in section V.A of this document.

TABLE V.36—SUMMARY OF ANALYTICAL RESULTS FOR COMPRESSOR TSLS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Cumulative FFC National Energy Savings (quads)						
	0.04	0.18	0.49	0.70	1.11	4.57
NPV of Consumer Costs and Benefits (2015$ billion)						
3% discount rate	0.1	0.6	1.6	2.2	3.3	(4.9)
7% discount rate	0.1	0.2	0.6	0.7	1.1	(4.7)
Cumulative FFC Emissions Reduction (Total FFC Emission)						
CO_2 (million metric tons)	2.2	10.6	29.2	41.3	65.6	271.3
SO_2 (thousand tons)	1.2	5.8	16.0	22.7	36.0	149.6
NO_X (thousand tons)	4.1	19.5	53.8	76.2	121.0	498.4
Hg (tons)	0.0	0.0	0.1	0.1	0.1	0.6
CH_4 (thousand tons)	9.8	46.7	128.9	182.7	290.1	1192.1
CH_4 (thousand tons CO_2eq) *	275.0	1308.7	3609.9	5116.0	8123.3	33378.7
N_2O (thousand tons)	0.0	0.1	0.3	0.5	0.8	3.1
N_2O (thousand tons CO_2eq) *	6.8	32.2	88.8	125.8	199.8	829.3
Value of Emissions Reduction (Total FFC Emissions)						
CO_2 (2015$ million) **	0.01 to 0.21	0.07 to 0.99	0.19 to 2.73	0.27 to 3.87	0.43 to 6.14	1.84 to 26.02
NO_X − 3% discount rate (2015$ million).	7.0 to 16.0	33.4 to 76.1	92.1 to 210.0	130.5 to 297.5	207.2 to 472.3	891.8 to 2033.4
NO_X − 7% discount rate (2015$ million).	2.6 to 5.8	12.3 to 27.8	34.0 to 76.6	48.1 to 108.5	76.4 to 172.3	343.4 to 774.2

Parentheses indicate negative (−) values.

* CO_2eq is the quantity of CO_2 that would have the same global warming potential (GWP).

** Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO2 emissions.

TABLE V. 37—SUMMARY OF ANALYTICAL RESULTS FOR COMPRESSORS TSLS: MANUFACTURER AND CONSUMER IMPACTS *

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Manufacturer Impacts						
Industry NPV (2014$ million) (No-new-standards case INPV = 497.1).	476.8 to 480.4	439.3 to 451.9	345.8 to 385.7	301.8	256.0	105.3
Industry NPV *(% change)*	(4.1) to (3.4)	(11.6) to (9.1)	(30.4) to (22.4)	(39.3)	(48.5)	(78.8)
Consumer Average LCC Savings (2015$)						
RP_FS_L_AC	$9,056	$8,902	$9,443	$7,579	$7,748	$7,817
RP_FS_L_WC	$14,396	$15,011	$16,538	$13,649	$14,397	$15,512
RP_FS_LF_AC	n.a.	n.a.	n.a.	n.a.	n.a.	$5,182
RP_FS_LF_WC	n.a.	n.a.	n.a.	n.a.	n.a.	$5,686
RP_VS_L_AC	$5,073	$6,061	$6,746	$5,732	$6,408	$5,784
RP_VS_L_WC	$12,017	$13,865	$14,922	$11,996	$12,055	$10,082
RP_VS_LF_AC	n.a.	n.a.	n.a.	n.a.	n.a.	$11,104
RP_VS_LF_WC	n.a.	n.a.	n.a.	n.a.	n.a.	$8,748
R1_FS_L_XX	n.a.	n.a.	n.a.	n.a.	n.a.	($282)
R3_FS_L_XX	n.a.	n.a.	n.a.	n.a.	n.a.	($693)
Consumer Simple PBP (years)						
RP_FS_L_AC	1.3	1.7	2.1	2.3	2.6	3.3
RP_FS_L_WC	2.0	2.4	2.8	3.0	3.2	3.8

TABLE V. 37—SUMMARY OF ANALYTICAL RESULTS FOR COMPRESSORS TSLS: MANUFACTURER AND CONSUMER IMPACTS *—Continued

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
RP_FS_LF_AC	n.a.	n.a.	n.a.	n.a.	n.a.	3.6
RP_FS_LF_WC	n.a.	n.a.	n.a.	n.a.	n.a.	4.0
RP_VS_L_AC	2.1	2.5	3.0	3.3	3.8	4.9
RP_VS_L_WC	2.8	3.4	4.1	4.3	4.9	5.9
RP_VS_LF_AC	n.a.	n.a.	n.a.	n.a.	n.a.	3.0
RP_VS_LF_WC	n.a.	n.a.	n.a.	n.a.	n.a.	2.7
R1_FS_L_XX	n.a.	n.a.	n.a.	n.a.	n.a.	9.2
R3_FS_L_XX	n.a.	n.a.	n.a.	n.a.	n.a.	12.1
Percent of Consumers that Experience Net Cost						
RP_FS_L_AC	0%	0%	1%	3%	5%	14%
RP_FS_L_WC	0%	1%	3%	5%	7%	15%
RP_FS_LF_AC	n.a.	n.a.	n.a.	n.a.	n.a.	8%
RP_FS_LF_WC	n.a.	n.a.	n.a.	n.a.	n.a.	10%
RP_VS_L_AC	0%	1%	4%	8%	13%	31%
RP_VS_L_WC	1%	3%	8%	14%	21%	40%
RP_VS_LF_AC	n.a.	n.a.	n.a.	n.a.	n.a.	6%
RP_VS_LF_WC	n.a.	n.a.	n.a.	n.a.	n.a.	5%
R1_FS_L_XX	n.a.	n.a.	n.a.	n.a.	n.a.	78%
R3_FS_L_XX	n.a.	n.a.	n.a.	n.a.	n.a.	83%

* Parentheses indicate negative (−) values.
The entry "n.a." means not applicable because no standards are being proposed for these equipment classes.

DOE first considered TSL 6, which represents the max-tech efficiency level. TSL 6 would save 4.57 quads of energy, an amount DOE considers significant. Under TSL 6, the NPV of consumer benefit would be −$4.71 billion using a discount rate of 7 percent, and −$4.94 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 6 are 271.3 Mt of CO_2,149.6 thousand tons of SO_2, 498.4 thousand tons of NO_X, 0.552 ton of Hg, 1192.1 thousand tons of CH_4, and 3.13 thousand tons of N_2O. The estimated monetary value of the CO_2 emissions reduction at TSL 6 ranges from $1,837 million to $26,016 million.

At TSL 6, the average LCC impacts are savings that range from $5,784 to $5,512 for rotary lubricated equipment classes, $5,182 to $11,104 for rotary lubricant-free equipment classes, and −$282 to −$693 for reciprocating equipment classes. The simple payback periods range from 3.3 to 5.9 years for rotary lubricated equipment classes, 2.7 to 4.0 years for rotary lubricant-free equipment classes, 9.2 to 12.1 years for reciprocating equipment classes. The fraction of consumers experiencing a net LCC cost ranges from 14 to 40 percent for rotary lubricated equipment classes, 5 to 10 percent for rotary lubricant-free equipment classes, and 78- to 83-percent for reciprocating equipment classes.

At TSL 6, DOE estimates a decrease in INPV of $391.8 million, which represents a loss of 78.8 percent in INPV for manufacturers.

The Secretary tentatively concludes that at TSL 6 for compressors, the benefits of energy savings, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the negative NPV of consumer benefits, the economic burden on some consumers, and the significant burden on the industry, including the conversion costs and profit margin impacts that could result in a large reduction in INPV. Consequently, the Secretary has tentatively concluded that TSL 6 is not economically justified.

DOE then considered TSL 5, which would save 1.11 quads of energy, an amount DOE considers significant. Under TSL 5, the NPV of consumer benefit would be $1.07 billion using a discount rate of 7 percent, and $3.28 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 5 are 65.6 Mt of CO_2,36.0 thousand tons of SO_2, 121.0 thousand tons of NO_X, 0.133 ton of Hg, 290.1 thousand tons of CH_4, and 0.75 thousand tons of N_2O. The estimated monetary value of the CO_2 emissions reduction at TSL 5 ranges from $427 million to $6,138 million.

At TSL 5 there is no projected increase in efficiency for rotary lubricant-free and reciprocating equipment classes. At TSL 5 for rotary lubricated equipment classes, the average LCC impact would result in savings that range from $6,408 for RP_VS_L_AC to $14,397 for RP_FS_L_WC. The simple payback period ranges from 2.6 years for RP_FS_L_AC to 4.9 years for RP_VS_L_WC. The fraction of consumers experiencing a net LCC cost ranges from 5-percent for RP_FS_L_AC to 21-percent for RP_VS_L_WC.

At TSL 5, DOE estimates a decrease in INPV of $241.1 million, which represents a loss of 48.5 percent in INPV for manufacturers.

Based on this analysis, DOE tentatively concludes that at TSL 5, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the economic burden on some consumers, and significant burden on the industry, including the conversion costs and profit margin impacts that could result in a large reduction in INPV. Consequently, DOE has tentatively concluded that TSL 5 is not economically justified.

DOE then considered TSL 4, which would save 0.70 quads of energy, an amount DOE considers significant. Under TSL 4, the NPV of consumer benefit would be $0.75 billion using a discount rate of 7 percent, and $2.21 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 41.3 Mt of CO_2, 22.7 thousand tons of SO_2, 76.2 thousand tons of NO_X, 0.084 ton of Hg, 182.7 thousand tons of CH_4, and 0.47 thousand tons of N_2O. The estimated monetary value of the CO_2 emissions reduction at TSL 4 ranges from $269 million to $3,866 million.

At TSL 4 there is no projected increase in efficiency for rotary lubricant-free and reciprocating equipment classes. At TSL 4 for rotary lubricated equipment classes, the average LCC impact would result in savings that range from $5,732 for RP_VS_L_AC to $13,649 for RP_FS_L_WC. The simple payback period ranges from 2.3 years for RP_FS_L_AC to 4.3 years for RP_VS_L_WC. The fraction of consumers experiencing a net LCC cost ranges from 3 percent for RP_FS_L_AC to 14-percent for RP_VS_L_WC.

At TSL 4, DOE estimates a decrease in INPV of $195.3 million, which represents a loss of 39.3 percent in INPV for manufacturers.

Based on this analysis, DOE tentatively concludes that at TSL 4 the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the economic burden on some consumers, and significant burden on the industry, including the conversion costs and profit margin impacts that could result in a large reduction in INPV. Consequently, DOE has tentatively concluded that TSL 4 is not economically justified.

DOE then considered TSL 3, which would save 0.49 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefit would be $0.56 billion using a discount rate of 7 percent, and $1.62 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 29.2 Mt of CO_2, 16.0 thousand tons of SO_2, 53.8 thousand tons of NO_X, 0.059 ton of Hg, 128.9 thousand tons of CH_4, and 0.34 thousand tons of N_2O. The estimated monetary value of the CO_2 emissions reduction at TSL 3 ranges from $190 million to $2,728 million.

At TSL 3 there is no projected increase in efficiency for rotary lubricant-free and reciprocating equipment classes. At TSL 3 for rotary lubricated equipment classes the average LCC impact would result in savings that range from $6,746 for RP_VS_L_AC to $16,538 for RP_FS_L_WC. The simple payback period ranges from 2.1 years for RP_FS_L_AC to 4.1 years for RP_VS_L_WC. The fraction of consumers experiencing a net LCC cost ranges from 1 percent for RP_FS_L_AC to 8-percent for RP_VS_L_WC.

At TSL 3, the projected change in INPV ranges from a decrease of $111.4 million to a decrease of $151.3 million, which represent decreases of 22.4 percent and 30.4 percent, respectively.

Based on this analysis, DOE tentatively concludes that at TSL 3 for compressors, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the economic burden on some consumers, and significant burden on the industry, including the conversion costs and profit margin impacts that could result in a large reduction in INPV. Consequently, DOE has tentatively concluded that TSL 3 is not economically justified.

DOE then considered TSL 2, which would save 0.18 quads of energy, an amount DOE considers significant. Under TSL 2, the NPV of consumer benefit would be $0.23 billion using a discount rate of 7 percent, and $0.63 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 2 are 10.6 Mt of CO_2, 5.8 thousand tons of SO_2, 19.5 thousand tons of NO_X, 0.021 ton of Hg, 46.7 thousand tons of CH_4, and 0.12 thousand tons of N_2O. The estimated monetary value of the CO_2 emissions reduction at TSL 2 ranges from $69 million to $989 million.

At TSL 2 there is no projected increase in efficiency for rotary lubricant-free and reciprocating equipment classes. At TSL 2 for rotary lubricated equipment classes, the average LCC impact would result in savings that range from $6,061 for RP_VS_L_AC to $15,011 for RP_FS_L_WC. The simple payback period ranges from 1.7 years for RP_FS_L_AC to 3.4 years for RP_VS_L_WC. The fraction of consumers experiencing a net LCC cost ranges from zero percent for RP_FS_L_AC to 3-percent for RP_VS_L_WC.

At TSL 2, the projected change in INPV ranges from a decrease of $45.2 million to a decrease of $57.8 million, which represent decreases of 9.1 percent and 11.6 percent, respectively.

After considering the analysis and weighing the benefits and burdens, and based upon DOE's understanding of currently available information, DOE has tentatively concluded that at TSL 2 for compressors the benefits of energy savings, positive NPV of consumer benefits, emission reductions, the estimated monetary value of the emissions reductions, and positive average LCC savings would outweigh the negative impacts on some consumers and the potential reduction in INPV for manufacturers. Accordingly, DOE has tentatively concluded that TSL 2 would offer the maximum improvement in efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy.

Therefore, based on the above considerations, DOE proposes to adopt the energy conservation standards for compressors at TSL 2. The proposed standards, expressed in package isentropic efficiency are shown in Table V.38. Table V.39 through Table V.42 provide mathematical coefficients required to calculate package isentropic efficiency in Table V.38. For "Fixed-speed compressor" equipment classes, the relevant Package Isentropic Efficiency is Full-Load Package Isentropic Efficiency; for "Variable-speed compressor" equipment classes, the relevant Package Isentropic Efficiency is Part-Load Package Isentropic Efficiency. Both Full- and Part-Load Package Isentropic Efficiency are determined in accordance with the proposed DOE test procedure. These proposed standards, if adopted, would apply to all compressors listed in Table V.38 and manufactured in, or imported into, the United States starting on the proposed compliance date specified in this proposal.

TABLE V.38—PROPOSED ENERGY CONSERVATION STANDARDS FOR COMPRESSORS

Equipment class	Minimum package isentropic efficiency	η_{Regr} (package isentropic efficiency reference curve)	d
Rotary; Lubricated; Air-cooled; Fixed-speed.	$\eta_{Regr} + (1 - \eta_{Regr}) * (d/100)$	$-0.00928 * \ln(.472 * V_1)^2 + 0.139 * \ln(.472 * V_1) + 0.271$.	−15
Rotary; Lubricated; Air-cooled; Variable-speed.	$\eta_{Regr} + (1 - \eta_{Regr}) * (d/100)$	$-0.0155 * \ln(.472 * V_1)^2 + 0.216 * \ln(.472 * V_1) + 0.00905$.	−10
Rotary; Lubricated; Water-cooled; Fixed-speed.	$.0235 + \eta_{Regr} + (1 - \eta_{Regr}) * (d/100)$	$-0.00928 * \ln(.472 * V_1)^2 + 0.139 * \ln(.472 * V_1) + 0.271$.	−15
Rotary; Lubricated; Water-cooled; Variable-speed.	$.0235 + \eta_{Regr} + (1 - \eta_{Regr}) * (d/100)$	$-0.0155 * \ln(.472 * V_1)^2 + 0.216 * \ln(.472 * V_1) + 0.00905$.	−15

TABLE V.38—PROPOSED ENERGY CONSERVATION STANDARDS FOR COMPRESSORS—Continued

Equipment class	Minimum package isentropic efficiency	η_{Regr} (package isentropic efficiency reference curve)	d
Rotary; Lubricant-free; Air-cooled; Fixed-speed.	$\eta_{Regr} + (1 - \eta_{Regr}) * (d/100)$	$A_1 * \ln(.472 * V_1)^2 + B_1 * \ln(.472 * V_1) + C_1$.	−11
Rotary; Lubricant-free; Air-cooled; Variable-speed.	$\eta_{Regr} + (1 - \eta_{Regr}) * (d/100)$	$A_2 * \ln(.472 * V_1)^2 + B_2 * \ln(.472 * V_1) + C_2$.	−13
Rotary; Lubricant-free; Water-cooled; Fixed-speed.	$A_3 * \ln(.472 * V_1)^2 + B_3 * \ln(.472 * V_1) + C_3 + \eta_{Regr} + (1 - \eta_{Regr}) * (d/100)$.	$A_1 * \ln(.472 * V_1)^2 + B_1 * \ln(.472 * V_1) + C_1$.	−11
Rotary; Lubricant-free; Water-cooled; Variable-speed.	$A_4 * \ln(.472 * V_1)^2 + B_4 * \ln(.472 * V_1) + C_4 + \eta_{Regr} + (1 - \eta_{Regr}) * (d/100)$.	$A_2 * \ln(.472 * V_1)^2 + B_2 * \ln(.472 * V_1) + C_2$.	−13

TABLE V.39—COEFFICIENTS FOR PROPOSED ENERGY CONSERVATION STANDARDS FOR ROTARY, LUBRICANT-FREE, AIR AND WATER-COOLED, FIXED-SPEED AIR COMPRESSORS

Full-load actual volume flow rate range (acfm)	A_1	B_1	C_1
$0 \leq V_1 \geq 161$	−0.00928	0.139	0.191
$161 < V_1 \leq 2125$	0.00281	0.0344	0.417
$2125 < V_1$	−0.00928	0.139	0.271

TABLE V.40—COEFFICIENTS FOR PROPOSED ENERGY CONSERVATION STANDARDS FOR ROTARY, LUBRICANT-FREE, AIR AND WATER-COOLED, VARIABLE-SPEED AIR COMPRESSORS

Full-load actual volume flow rate range (acfm)	A_2	B_2	C_2
$0 < V_1 \leq 102$	−0.0155	0.216	−0.0984
$102 < V_1 \leq 1426$	0.000	0.0958	0.134
$1426 < V_1$	−0.0155	0.216	0.00905

TABLE V.41—COEFFICIENTS FOR PROPOSED ENERGY CONSERVATION STANDARDS FOR ROTARY, LUBRICANT-FREE, WATER-COOLED, FIXED-SPEED AIR COMPRESSORS

Full-load actual volume flow rate range (acfm)	A_3	B_3	C_3
$0 < V < 102$	0	0	0
$102 \leq V_1$	−0.00924	0.117	−0.315

TABLE V.42—COEFFICIENTS FOR PROPOSED ENERGY CONSERVATION STANDARDS FOR ROTARY, LUBRICANT-FREE, WATER-COOLED, VARIABLE-SPEED AIR COMPRESSORS

Full-load actual volume flow rate range (acfm)	A_4	B_4	C_4
$0 < V_1 < 74$	0	0	0
$74 \leq V_1$	0.000173	0.00783	−0.0300

DOE requests comments and data that will aid in the refinement of its analysis of the calculated reduction to the industry's net present value at the TSL 3 level (see section V.B.2.a). These impacts are captured in the Manufacturing Impact Analysis, and in particular within the DOE's Government Regulatory Impact Model (see section V.B.2). Comments are also requested on DOE's inputs to the product and capital conversion costs, including the lack of available skilled design engineers (see section V.B.2.c) and product production costs (see section V.B.2.a), as well as DOE's assumptions regarding mark-up scenarios, specifically the assumption regarding the percentage of costs that will be passed on to consumers (see section IV.C.7).

This is identified as Issue 52 in section VIII.E, "Issues on Which DOE Seeks Comment."

2. Summary of Annualized Benefits and Costs of the Proposed Standards

The benefits and costs of the proposed standards can also be expressed in terms of annualized values. The annualized net benefit is the sum of: (1) The annualized national economic value (expressed in 2015$) of the benefits from operating equipment that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in equipment purchase costs, and (2) the annualized monetary value of the benefits of CO_2 and NO_X emission reductions.[122]

Table V.43 shows the annualized values for compressors under TSL 2, expressed in 2015$. The results under the primary estimate are as follows.

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[122] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2016, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (2020, 2030, *etc.*), and then discounted the present value from each year to 2016. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year that yields the same present value.

Using a 7-percent discount rate for benefits and costs other than CO_2 reduction (for which DOE used a 3-percent discount rate along with the average SCC series that has a value of $40.0/t in 2015), the estimated cost of the standards proposed in this rule is 10.4 million per year in increased equipment costs, while the estimated annual benefits are $36.0 million in reduced equipment operating costs, $19.2 million in CO_2 reductions, and $1.4 million in reduced NO_X emissions. In this case, the net benefit amounts to $46 million per year.

Using a 3-percent discount rate for all benefits and costs and the average SCC series that has a value of $40.0/t in 2015, the estimated cost of the proposed standards is $10.9 million per year in increased equipment costs, while the estimated annual benefits are $48.4 million in reduced operating costs, $19.2 million in CO_2 reductions, and $2.0 million in reduced NO_X emissions. In this case, the net benefit amounts to $59 million per year.

TABLE V.43—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDARDS (TSL 2) FOR COMPRESSORS SOLD IN 2022–2051

	Discount rate	Primary estimate*	Low net benefits estimate*	High net benefits estimate*
		million 2015$/year		
Benefits				
Consumer Operating Cost Savings	7%	36.0	29.3	43.7.
	3%	48.4	38.9	60.4.
CO_2 Reduction (using mean SCC at 5% discount rate)**	5%	5.7	4.8	6.9.
CO_2 Reduction (using mean SCC at 3% discount rate)**	3%	19.2	16.0	23.2.
CO_2 Reduction (using mean SCC at 2.5% discount rate)**	2.5%	28.1	23.3	33.9.
CO_2 Reduction (using 95th percentile SCC at 3% discount rate)**.	3%	58.5	48.6	70.6.
NO_X Reduction†	7%	1.4	1.2	3.7.
	3%	2.0	1.6	5.4.
Total Benefits††	7% plus CO_2 range	43 to 96	35 to 79	54 to 118.
	7%	57	46	71.
	3% plus CO_2 range	56 to 109	45 to 89	73 to 136.
	3%	70	57	89.
Costs				
Consumer Incremental Installed Equipment Costs	7%	10.4	8.9	11.8.
	3%	10.9	9.2	12.4.
Net Benefits				
Total††	7% plus CO_2 range	33 to 85	26 to 70	42 to 106.
	7%	46	38	59.
	3% plus CO_2 range	45 to 98	36 to 80	60 to 124.
	3%	59	47	77.

* This table presents the annualized costs and benefits associated with compressors shipped in 2022–2051. These results include benefits to consumers which accrue after 2051 from the equipment purchased in 2022–2051. The Primary, Low Benefits, and High Benefits Estimates utilize projections of energy prices from the *AEO 2015* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental product costs reflect a constant trend in the Primary Estimate, an increasing trend in the Low Benefits Estimate, and a decreasing trend in the High Benefits Estimate. The methods used to derive projected price trends are explained in section IV.H.1. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

** The CO_2 reduction benefits are calculated using 4 different sets of SCC values. The first three use the average SCC calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC values are emission year specific. See section IV.L.1 for more details.

† DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the *Regulatory Impact Analysis for the Clean Power Plan Final Rule,* published in August 2015 by EPA's Office of Air Quality Planning and Standards. (Available at: *http://www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.*) See section IV.L.2 for further discussion. For DOE's Primary Estimate and Low Net Benefits Estimate, the agency is using a national benefit-per-ton estimate for NO_X emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski et al., 2009). For DOE's High Net Benefits Estimate, the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al., 2011), which are nearly two-and-a-half times larger than those from the ACS study.

†† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to the average SCC with a 3-percent discount rate ($40.0/t case). In the rows labeled "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

VI. Certification Requirements

DOE proposes to adopt the reporting requirements in a new section 429.61(b) within subpart B of 10 CFR part 429. This section would also include sampling requirements, which are discussed in the test procedure NOPR. Consistent with other types of covered products and equipment, the proposed section (10 CFR 429.61(b)) would specify that the general certification report requirements contained in 10 CFR 429.12 apply to compressors. The additional requirements proposed in 10 CFR 429.61 would require manufacturers to supply certain additional information to DOE in certification reports for compressors to demonstrate compliance with any energy conservation standards established as a result of this rulemaking.

Specifically, DOE proposes that the following data be included in the certification reports and be made public on DOE's Web site:

- Full-load package isentropic efficiency or part-load package isentropic efficiency, as applicable (dimensionless);
- Full-load actual volume flow rate (in actual cubic feet per minute);
- Compressor motor nominal horsepower (in horsepower);
- Full-load operating pressure (in pounds per square inch, gauge);
- Maximum full-flow operating pressure (in pounds per square inch, gauge); and
- Pressure ratio (dimensionless).

10 CFR 429.12(b) already requires reporting of manufacturer name, model number(s), and equipment class for all covered products and equipment.

With respect to reporting model number(s), a certification report must include a basic model number and the manufacturer's (individual) model number(s). A manufacturer's model number (individual model number) is the identifier used by a manufacturer to uniquely identify what is commonly considered a "model" in industry—all units of a particular design. The manufacturer's (individual) model number typically appears on the product nameplate, in product catalogs and in other product advertising literature. In contrast, the basic model number is a number used by the manufacturer to indicate to DOE how the manufacturer has grouped its individual models for the purposes of testing and rating; many manufacturers choose to use a model number that is similar to the individual model numbers in the basic model, but that is not required. The manufacturer's individual model number(s) in each basic model must reference not only the bare compressor, but also any motor and controls with which the compressor is being rated.

VII. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Section 1(b)(1) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. The problems that the proposed standards set forth in this NOPR are intended to address are as follows:

(1) Insufficient information and the high costs of gathering and analyzing relevant information leads some consumers to miss opportunities to make cost-effective investments in energy efficiency.

(2) In some cases, the benefits of more-efficient equipment are not realized due to misaligned incentives between purchasers and users. An example of such a case is when the equipment purchase decision is made by a building contractor or building owner who does not pay the energy costs.

(3) There are external benefits resulting from improved energy efficiency of appliances and equipment that are not captured by the users of such equipment. These benefits include externalities related to public health, environmental protection, and national energy security that are not reflected in energy prices, such as reduced emissions of air pollutants and greenhouse gases that impact human health and global warming. DOE attempts to quantify some of the external benefits through use of social cost of carbon values.

In addition, DOE has determined that this regulatory action is not a "significant regulatory action" under section 3(f) of Executive Order 12866. Section 6(a)(3)(A) of the Executive Order states that absent a material change in the development of the planned regulatory action, regulatory action not designated as significant will not be subject to review under the aforementioned section unless, within 10 working days of receipt of DOE's list of planned regulatory actions, the Administrator of OIRA notifies the agency that OIRA has determined that a planned regulation is a significant regulatory action within the meaning of the Executive order.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011. 76 FR 3281 (January 21, 2011). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, OIRA has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that this NOPR is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://energy.gov/gc/office-general-counsel*). DOE has prepared the following IRFA for the equipment that are the subject of this rulemaking.

For manufacturers of compressors, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as "small businesses" for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. (65 FR 30840, 30849 (May 15, 2000), as amended at 65 FR 53533, 53544 (Sept. 5, 2000), and codified at 13 CFR part 121.) The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.* Manufacturing of compressors is classified under NAICS 333912, "Air and Gas Compressor Manufacturing." The SBA sets a threshold of 500 employees or fewer for an entity to be considered as a small business for this category.

1. Description on Estimated Number of Small Entities Regulated

a. Methodology for Estimating the Number of Small Entities

To estimate the number of small business manufacturers of equipment within the scope of this rulemaking, DOE conducted a market survey using available public information. DOE's research involved industry trade association membership directories (including CAGI), individual company and online retailer Web sites, and market research tools (*e.g.,* Hoovers reports) to create a list of companies that manufacture equipment covered by this rulemaking. DOE presented its list to manufacturers in MIA interviews and asked industry representatives if they were aware of any other small manufacturers during manufacturer interviews and at DOE public meetings. DOE reviewed publicly-available data and contacted select companies on its list, as necessary, to determine whether they met the SBA's definition of a small business manufacturer. DOE screened out companies that do not offer equipment within the scope of this rulemaking, do not meet the definition of a "small business," or are foreign-owned and operated.

b. Compressor Industry Structure and Nature of Competition

DOE identified a total of 37 manufacturers of compressor equipment sold in the United States and within the scope of this rulemaking. Seventeen of these manufacturers met the 500-employee threshold defined by the SBA to qualify as a small business, but only 13 were domestic companies. All 13 domestic small businesses manufacture reciprocating air compressors, while only five of the 13 manufacture rotary air compressors.

Within the compressor industry, manufacturers can be classified into two categories; original equipment manufacturers (OEMs) and compressor packagers. OEMs manufacture their own air-ends and assemble them with other components to create complete package compressors. Packagers assemble motors and other accessories with air-ends purchased from other companies, resulting in a complete compressor.

Within the rotary air compressor industry, DOE identified 20 manufacturers; 15 are OEMs and five are packagers of compressors. Of the 20 total manufacturers, seven large OEMs supply approximately 80-percent of shipments and revenues. Of the five domestic small rotary air compressor businesses identified, DOE's research indicates that two are OEMs and three are packagers.

The reciprocating air compressor market has a significantly different structure than the rotary market. The reciprocating market is highly fragmented, consisting of approximately 16 large and 17 small OEMs and packagers. Five of the 16 large businesses are members of CAGI. Eight of the 16 large manufacturers are believed to be packagers. Of the 18 identified small businesses, 13 are domestic. DOE notes that some interviewed manufacturers stated that there are potentially a large number of domestic small reciprocating air compressor manufacturers who assemble compressor packages from nearly complete components. These unidentified small manufacturers are not members of CAGI and typically have a limited marketing presence. DOE was not able to identify these small businesses. Based on this information, it is possible that DOE's list of 13 small domestic players may not include all small U.S. manufacturers in the industry. Of the 13 identified domestic reciprocating air compressor manufacturers, three are believed to be OEMs and 10 are believed to be packagers.

Table VII.1 presents both the total number of domestic small businesses offering equipment in each equipment class grouping as well as the breakdown between domestic small business OEMs and domestic small business packagers.

TABLE VII.1—NUMBER OF DOMESTIC SMALL BUSINESSES MANUFACTURING COMPRESSORS BY EQUIPMENT CLASS GROUPING

Equipment class grouping	Number of domestic small original equipment manufacturers	Number of domestic small packagers	Total number of domestic small businesses
Rotary Air Compressors	2	3	5
Reciprocating Air Compressors	3	10	13
Total	3	10	13

DOE requests comment on the number and names of domestic small manufacturers producing covered equipment. This is identified as Issue 53 in section VIII.E, "Issues on Which DOE Seeks Comment."

c. Manufacturer Participation

DOE reached out to all 13 identified domestic small businesses to invite them to take part in manufacturer impact analysis interviews. As mentioned previously, all thirteen domestic small businesses manufacturer reciprocating air compressors, while only five of the thirteen manufacturer rotary air compressors.

As a part of the domestic small business outreach process, DOE attempted to obtain the best contact information possible for each domestic small business. To do so, DOE directly solicited domestic small business contact information from known industry participants. In addition, DOE also researched domestic small business contact information using publically available information. When these methods were successful, DOE initiated contact with domestic small businesses by emailing recommended, specific individuals within an organization. When specific email addresses were not available, DOE contacted manufacturers using general contact information provided on manufacturer Web pages; this includes contact web forms, as well as general sales, support, and information email addresses.

Of the five domestic small manufacturers of rotary compressors, two responded to DOE's contact attempt and were willing to discuss potential standards with DOE. These two manufacturers are the only known domestic small OEMs of rotary compressor. The three that did not respond are believed to be packagers.

Of the thirteen domestic small manufacturers of reciprocating compressors, four responded to DOE's contact attempt and ultimately, three were willing to discuss potential standards with DOE. DOE notes that one of the three is a reciprocating compressor packager, while the other two are OEMs of both reciprocating and rotary compressors. The latter are the same manufacturers discussed in the previous paragraph. DOE notes that no new standards for reciprocating compressors are proposed in this document.

Finally, DOE also discussed information about small businesses and potential impacts on small businesses while interviewing large manufacturers.

2. Description and Estimate of Compliance Requirements

Because DOE proposes to establish standards for only rotary equipment, this section will only focus on the estimated impacts to the five domestic small manufacturers of rotary compressors.

Of the five domestic small rotary compressor manufacturers identified, DOE's research indicates that two are OEMs and three are packagers. Whereas OEMs would be expected to incur significant redesign and capital conversion costs in order to comply with amended standards, packagers would not. Unlike OEMs, packagers would not face significant capital conversion costs, as the processes they use to assemble completed packages from purchased air-ends and components is not expected to change. Packagers are also not expected to face significant product redesign costs, as the burden of engineering and redesigning the air-end and other key components would reside with OEMs. However, as manufacturers OEMs and packagers are both expected to incur new compliance and testing costs, as any new energy conservation standard would require their equipment to be tested and certified to the standard, using a DOE test procedure.

As a result of these efforts, the following discussion of domestic small business impacts considers capital, redesign, and compliance cost impacts facing rotary OEMs, while only considering compliance cost impacts for rotary packagers.

DOE estimates that domestic small rotary compressor OEMs account for approximately 9 percent of models available in the market. As such, DOE estimates that 9 percent of the total industry product and capital conversion costs (excluding compliance costs) are attributed to domestic small rotary compressor OEMs. At TSL 2, the level proposed in this document, 9-percent of total conversion costs (excluding compliance costs) equates to $7.9 to $10.3 million; the remaining $78.3 to $102.0 million is attributed to large OEMs. DOE's conversion cost estimates were derived from total industry conversion costs discussed previously in section IV.J.2.b.i. DOE notes that the ranges shown here relate to the two conversion cost scenarios investigated in section IV.J.2.b.i.

DOE also estimates that, combined, domestic small rotary compressor OEMs and packagers account for approximately 15-percent of models available in the market. As such, DOE estimates that 15-percent of the total industry testing and compliance costs are attributed to domestic small rotary compressor OEMs and packagers. At TSL 2, this equates to $1.9 million for domestic small manufacturers and $10.9 million for large OEMs. DOE notes that these costs represent those involved in testing and ensuring compliance of both lubricated and non-lubricated equipment with the proposed standards. DOE's testing and compliance cost estimates were derived from total industry conversion costs discussed previously in section IV.J.2.b.i.

Finally, DOE estimated revenues for the five domestic small rotary manufacturers. To do so, DOE researched publicly available revenue estimates from Hoovers[123] and scaled those revenues to reflect only the portion of a company's revenues attributable to rotary compressor sales. DOE estimates the aggregate 2014 rotary compressor revenues for the five domestic small manufacturers to be approximately $41.6 million. DOE's GRIM results estimate total industry 2014 revenues (including small businesses) to be $583.8 million. Accordingly, revenues from large rotary manufacturers are estimated to be $542.2 million. As such DOE estimates domestic small rotary manufacturers account for approximately 7.1-percent of industry revenues and large manufacturers account for 92.9-percent. Comparing costs to revenues for each group, DOE estimates total conversion costs, including testing and compliance, at TSL 2 are approximately 23.8-to 29.5-percent of revenues for domestic small manufacturers and 16.4 to 20.8 percent of revenues for large manufacturers. Table VII.2 summarizes domestic small and large business conversion and compliance costs and shows the relative impacts of conversion costs on domestic small manufacturers relative to large manufacturers.

TABLE VII.2—AGGREGATED IMPACTS OF CONVERSION COSTS ON A DOMESTIC SMALL MANUFACTURERS AT THE PROPOSED STANDARD, TSL 2

	Aggregate impact to domestic small rotary manufacturers	Aggregate impact to large, rotary manufacturers
Total Product and Capital Conversion Costs, Excluding Compliance and Testing Costs (Millions).	$7.9 to $10.3	$78.3 to $102.0.
Total Testing and Compliance Costs (Millions)	$1.9	$10.9.
Total Conversion, Testing, and Compliance Costs (Millions)	$9.9 to $12.3	$89.2 to $112.9.
2014 Revenues (Millions)	$41.6	$542.2.
Total Conversion, Testing, and Compliance Cost, as a Percentage of Annual Revenue	23.8% to 29.5%	16.4% to 20.8%.

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[123] Hoovers Inc., Company Profiles, Various Companies (Available at: *www.hoovers.com/*).

However, as noted in section V.B.2.a, the GRIM free cash flow results in 2021 indicated that some manufacturers may need to access the capital markets in order to fund conversion costs directly related to the proposed standard. Given that small manufacturers may have greater difficulty securing outside capital[124] and that the necessary conversion costs are not insignificant to the size of a small business, it is possible the domestic small OEMs may be forced to retire a greater portion of product models than large competitors. Also, smaller companies often have a higher cost of borrowing due to higher risk on the part of investors, largely attributed to lower cash flows and lower per unit profitability. In these cases, small manufacturers may observe higher costs of debt than larger manufacturers.

DOE notes that this conversion cost analysis assumes that compressors sold by domestic small manufacturers are of the same efficiency distribution as those sold by large manufacturers. DOE requests comment and data on the relative efficiency of equipment sold by domestic small manufacturers, as compared to equipment sold by large manufacturers. This is identified as Issue 54 in section VIII.E, "Issues on Which DOE Seeks Comment."

DOE requests comment and data on the impact of the proposed standard on domestic small business manufacturers. Specifically, DOE requests comment on the magnitude of conversion costs for a domestic small manufacturers and the number or percent of models produced by domestic small manufacturers. DOE also requests data on the cost of capital for domestic small manufacturers to better quantify how domestic small manufacturers might be disadvantaged relative to large competitors. This is identified as Issue 55 in section VIII.E, "Issues on Which DOE Seeks Comment."

3. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rule being considered today.

4. Significant Alternatives to the Rule

The discussion above analyzes impacts on small businesses that would result from DOE's proposed rule. In addition to the other TSLs being considered, the NOPR TSD includes an analysis of the following policy alternatives: (1) No change in standards; (2) consumer rebates; (3) consumer tax credits; (4) manufacturer tax credits; and (5) voluntary energy efficiency targets. While these alternatives may mitigate to some varying extent the economic impacts on small entities compared to the proposed standards, DOE does not intend to consider these alternatives further because in several cases, they would not be feasible to implement without authority and funding from Congress, and in all cases, DOE has determined that the energy savings of these alternatives are significantly smaller than those that would be expected to result from adoption of the proposed standard levels (ranging from approximately 11-percent to 66-percent of the energy savings from the proposed standards). Accordingly, DOE is declining to adopt any of these alternatives and is proposing the standards set forth in this rulemaking. (See chapter 17 of the NOPR TSD for further detail on the policy alternatives DOE considered.)

Additional compliance flexibilities may be available through other means. For example, individual manufacturers may petition for a waiver of the applicable test procedure. Further, EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed $8,000,000 may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the effective date of a final rule establishing the standard. Additionally, Section 504 of the Department of Energy Organization Act, 42 U.S.C. 7194, provides authority for the Secretary to adjust a rule issued under EPCA in order to prevent "special hardship, inequity, or unfair distribution of burdens" that may be imposed on that manufacturer as a result of such rule. Manufacturers should refer to 10 CFR part 430, subpart E, and Part 1003 for additional details.

DOE continues to seek input from businesses that would be affected by this rulemaking and will consider comments received in the development of any final rule.

C. Review Under the Paperwork Reduction Act

Manufacturers of compressors must certify to DOE that their equipment complies with any applicable energy conservation standards. In certifying compliance, manufacturers must test their equipment according to the DOE test procedures for compressors, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for covered consumer products and commercial equipment. *See generally* 10 CFR part 429. The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act (NEPA) of 1969, DOE has determined that the proposed rule fits within the category of actions included in Categorical Exclusion (CX) B5.1 and otherwise meets the requirements for application of a CX. See 10 CFR part 1021, App. B, B5.1(b); 1021.410(b) and App. B, B(1)–(5). The proposed rule fits within this category of actions because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, and for which none of the exceptions identified in CX B5.1(b) apply. Therefore, DOE has made a CX determination for this rulemaking, and DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this proposed rule. DOE's CX determination for this proposed rule is available at *http://energy.gov/nepa/categorical-exclusion-cx-determinations-cx.*

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by Executive Order 13132.

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[124] Simon, Ruth, and Angus Loten, "Small-Business Lending Is Slow to Recover," *Wall Street Journal*, August 14, 2014. Accessed August 2014, available at *http://online.wsj.com/articles/small-business-lending-is-slow-to-recover-1408329562.*

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. 61 FR 4729 (February 7, 1996). Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *http://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf*.

DOE has concluded that this proposed rule is not expected to require expenditures of $100 million or more on the private sector. As a result, the analytical requirements of UMRA described above are not applicable.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 15, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this NOPR under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that this regulatory action, which proposes new energy conservation standards for compressors, is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this proposed rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (January 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are "influential scientific information," which the Bulletin defines as "scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions." *Id.* at FR 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The "Energy Conservation Standards Rulemaking Peer Review Report" dated February 2007 has been disseminated and is available at the following Web site: *http://energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report.*

VIII. Public Participation

A. Attendance at the Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov.*

Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email (*Regina.Washington@ee.doe.gov*) so that the necessary procedures can be completed.

DOE requires visitors to have laptops and other devices, such as tablets, checked upon entry into the Forrestal Building. Any person wishing to bring these devices into the building will be required to obtain a property pass. Visitors should avoid bringing these devices, or allow an extra 45 minutes to check in. Please report to the visitor's desk to have devices checked before proceeding through security.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding identification (ID) requirements for individuals wishing to enter Federal buildings from specific States and U.S. territories. As a result, driver's licenses from several States or territory will not be accepted for building entry, and instead, one of the alternate forms of ID listed below will be required. DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, American Samoa, Arizona, Louisiana, Maine, Massachusetts, Minnesota, New York, Oklahoma, and Washington. Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the States of Minnesota, New York, or Washington (Enhanced licenses issued by these States are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government-issued Photo-ID card.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site at *https://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/87* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this document. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make follow-up contact, if needed.

C. Conduct of the Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA. (42 U.S.C. 6306) A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the public meeting, interested parties may submit further comments on the proceedings, as well as on any aspect of the rulemaking, until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this document and will be accessible on the DOE Web site. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via *www.regulations.gov*. The *www.regulations.gov* Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or mail. Comments and documents submitted via email, hand delivery/courier, or mail also will be posted to *www.regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked "confidential" including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. DOE invites comments on whether DOE should adopt standards for compressors at TSL 3 instead of at TSL 2.

2. DOE seeks comment on its proposal to limit the scope of energy conservation standard proposed in this document to only equipment that is made up of a compression element (bare compressor), driver(s), mechanical equipment to drive the compressor element, and any ancillary equipment (*i.e.*, a "packaged compressor"), through the use of the defined term, "air compressors."

3. DOE seeks comment on its proposal to limit the scope of energy conservation standard proposed in this document to only compressors that are designed to compress air and that have inlets open to the atmosphere or other source of air, through the use of the defined term, "air compressors."

4. DOE requests comment on its proposal to consider standards for both single- and three-phase compressor equipment. DOE also requests comment on any market trends that may affect the efficiency of such equipment in the future. DOE requests data that may aid in characterizing the relative cost and performance of equipment of different

motor phase counts, so that DOE can better evaluate whether a substitution incentive is likely to be created.

5. DOE requests comment on the proposal to include only compressors with a compressor motor nominal horsepower of greater than or equal to 1 and less than or equal to 500 within the scope of this energy conservation standard.

6. DOE requests comment on its proposal to establish separate equipment classes for rotary and reciprocating equipment, and on whether and why utility or performance differences exist between the two types of equipment. DOE requests comment on its proposal to establish separate equipment classes for rotary and reciprocating equipment, and on whether and why utility or performance differences exist between the two types of equipment.

7. DOE requests comment on separating equipment classes by lubricant presence, and specifically on whether ISO 8573–1:2010 is suitable for characterizing compressors on that basis. DOE also requests comments on the proposed definitions for lubricated compressor, lubricant-free compressors, and auxiliary substance.

8. DOE requests comment on its proposal to establish separate equipment classes for air- and water-cooled equipment. DOE also requests comments on the proposed definitions for air- and water-cooled compressor.

9. DOE requests comment on the establishment of separate equipment classes, by motor phase count, for reciprocating equipment.

10. DOE also requests comment on the proposal to combine single- and three-phase rotary equipment in each rotary equipment class.

11. DOE also requests comment specifically on IE4 or "super premium" electric motors, their suitability for compressors, and on any efforts to incorporate them into newly developed equipment.

12. DOE seeks comment on whether sufficient resources would be available such that criterion 2 of the screening analysis is satisfied.

13. DOE requests comment on the use of 125 and 175 psig as representative pressures to establish absolute MSPs for rotary and reciprocating equipment classes, respectively.

14. DOE requests comment on DOE's proposal to establish efficiency levels that are independent of pressure.

15. DOE also requests comment on DOE's proposal to establish incremental MSPs that are independent of pressure.

16. DOE requests additional data which can be used to refine its current baseline, max-tech, and efficiency level assumptions.

17. DOE requests comment on the use of the EU Lot 31 regression curve for piston standard air compressors to define the regression curve of the R3_FS_L_XX equipment class.

18. DOE requests comment and supporting data on the efficiency levels established for the RP_FS_L_AC, RP_VS_L_AC, and R3_FS_L_XX equipment classes.

19. DOE requests comment on the proposed efficiency levels selected for the RP_VS_LF_AC equipment class regarding their representation of the market, and any data that could improve the analysis.

20. DOE requests comment on the proposed efficiency levels selected for the RP_VS_LF_WC equipment class regarding their representation of the market, and any data that could improve the analysis.

21. DOE requests comment and supporting data on the proposed efficiency levels established for the R1_FS_L_XX equipment class.

22. DOE requests comment on the use of Lot 31 MSP-Flow-Efficiency Relationships to develop MSP-flow-efficiency relationships for the proposed RP_FS_L_AC and RP_VS_L_AC equipment classes.

23. DOE requests comment on the methods used to develop RP_FS_LF_AC (lubricant-free) incremental MSP. Specifically, DOE requests comment on the use of RP_FS_L_AC (lubricated) incremental MSP relationship to develop a lubricant-free incremental MSP relationship.

24. DOE requests comment and supporting data on the MSPs established for the RP_FS_LF_AC equipment class.

25. DOE requests comment on the methods used to develop RP_VS_LF_AC (lubricant-free) incremental MSP. Specifically, DOE requests comment on the use of RP_VS_L_AC (lubricated) incremental MSP relationship to develop a lubricant-free incremental MSP relationship.

26. DOE requests comment and supporting data on the MSPs established for the RP_VS_LF_AC equipment class.

27. DOE requests comment on the use of incremental MSP for air-cooled equipment classes to represent incremental MSP for water-cooled equipment classes.

28. DOE requests comment and supporting data on the MSPs established for the R3_FS_L_XX equipment class.

29. DOE requests comment on the use of incremental MSP for the R3_FS_L_XX equipment classes to represent incremental MSP for the R1_FS_L_XX equipment classes.

30. DOE requests comment on its estimates for manufacturer markups, as well as material, labor, depreciation, and overhead breakdowns.

31. DOE seeks input on its analysis of market channels listed above in Table IV.28, particularly related to whether the channels include all necessary intermediate steps, and the estimated market share of each channel.

32. Table IV.29 shows the distribution of air compressor application for both rotary and reciprocating air compressors. DOE seeks comment on its distribution of air compressors application.

33. DOE requests comment and information on average annual operating hours for the compressor types and applications in the scope of this rulemaking.

34. DOE requests comment and information on typical load profiles for the air compressor types and applications in the scope of this rulemaking.

35. DOE seeks data on the degree that compressors are over- or under-sized for an intended application. Specifically, DOE requests data on the degree that air compressors are operated at duty points other than their intended design point.

36. DOE requests information and data on the degree that a compressor's pressure can be set above or below its design point. Additionally, DOE requests information and data on air compressor efficiency when it is operated above the design point pressure.

37. DOE requests comments on the most appropriate trend to use for real (inflation-adjusted) compressor prices.

38. DOE requests comment on whether any of the efficiency levels considered in this NOPR might lead to an increase in installation costs and, if so, data regarding the magnitude of the increased cost for each relevant efficiency level.

39. DOE seeks comment on these minimum, average, and maximum equipment lifetimes, and whether or not they are appropriate for all equipment classes.

40. DOE seeks comment on the total 2013 shipments by equipment class.

41. DOE seeks comment on its assumption that air compressors with a capacity of no more than 50 ACFM are used in commercial applications, and air compressors greater than 50 ACFM are used in industrial applications.

42. DOE seeks comment on the share of shipments by equipment class, and how these shares may change over time.

43. DOE seeks comment on whether the assumed price elasticities are reasonable for air compressors.

44. DOE seeks comment on its assumption of no change over time in the market share of more efficient equipment in the no-new-standards case.

45. DOE seeks information on any projected change in equipment efficiencies over time, specifically whether or not the market shares of air compressors by efficiency would change after the publication of a new standard.

46. DOE requests comment on its estimates of average industry financial parameters.

47. DOE requests comment on the use of failure rates for rotary compressor equipment as a proxy for reciprocating equipment failure rates.

48. DOE requests feedback on its conversion cost methodology, including quantitative estimates and qualitative descriptions of the capital and product conversion costs manufacturers would incur in order to comply with amended energy conservation standards.

49. DOE requests comments on the total annual direct employment levels in the industry.

50. DOE requests comment on potential bottlenecks in manufacturing capacity or constraints in engineering resources that could result from a new standard.

51. DOE requests comments on the cumulative regulatory burden facing compressor manufacturers. Specifically, DOE seeks input on any equipment-specific Federal regulations with which compliance is required within three years of the proposed compliance date for any final compressor standards, as well as on recommendations on how DOE may be able to align varying regulations to mitigate cumulative burden.

DOE requests comments and data that will aid in the refinement of its analysis of the calculated reduction to the industry's net present value at the TSL 3 level (see section V.B.2.a). These impacts are captured in the Manufacturing Impact Analysis, and in particular within the DOE's Government Regulatory Impact Model (see section V.B.2). Comments are also requested on DOE's inputs to the product and capital conversion costs, including the lack of available skilled design engineers (see section V.B.2.c) and product production costs (see section V.B.2.a), as well as DOE's assumptions regarding mark-up scenarios, specifically the assumption regarding the percentage of costs that will be passed on to consumers (see section IV.C.7).

52. DOE requests comment on the number and names of domestic small manufacturers producing covered equipment.

53. DOE notes that this conversion cost analysis assumes that compressors sold by domestic small manufacturers are of the same efficiency distribution as those sold by large manufacturers. DOE requests comment and data on the relative efficiency of equipment sold by domestic small manufacturers, as compared to equipment sold by large manufacturers.

54. DOE requests comment and data on the impact of the proposed standard on domestic small business manufacturers. Specifically, DOE requests comment on the magnitude of conversion costs for a domestic small manufacturers and the number or percent of models produced by domestic small manufacturers. DOE also requests data on the cost of capital for domestic small manufacturers to better quantify how domestic small manufacturers might be disadvantaged relative to large competitors.

IX. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects

10 CFR Part 429

Confidential business information, Energy conservation, Household appliances, Imports, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on April 29, 2016.

David Friedman,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend parts 429 and 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 429.12 is amended by revising paragraph (b)(13) to read as follows:

§ 429.12 General requirements applicable to certification reports.

* * * * *

(b) * * *

(13) Product specific information listed in §§ 429.14 through 429.61 of this chapter.

* * * * *

■ 3. Section 429.61 [proposed at 81 FR 27219, (May 5, 2016)] is amended by adding paragraph (b) to read as follows:

§ 429.61 Compressors.

* * * * *

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to compressors; and

(2) Pursuant to § 429.12(b)(13), a certification report will include the following public product-specific information:

(i) Full- or part-load package isentropic efficiency, as applicable (dimensionless);

(ii) Full-load actual volume flow rate (in actual cubic feet per minute);

(iii) Compressor motor nominal horsepower (in horsepower);

(iv) Full-load operating pressure (in pounds per square inch, gauge);

(v) Maximum full-flow operating pressure (in pounds per square inch, gauge); and

(vi) Pressure ratio (dimensionless).

PART 431—ENERGY CONSERVATION PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 4. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 5. Section 431.342 [proposed at 81 FR 27219 (May 5, 2016)] is amended by adding, in alphabetical order, definitions for the terms "Air-cooled compressor," "Auxiliary substance," "Lubricant-free compressor," "Lubricated compressor," and "Water-cooled compressor."

The additions read as follows:

§ 431.342 Definitions concerning compressors.

* * * * *

Air-cooled compressor means a compressor that utilizes air to cool both the compressed air and, if present, any auxiliary substances used to facilitate compression.

* * * * *

Auxiliary substance means any substance deliberately introduced into a compression process to aid in compression of a gas by any of the following: lubricating, sealing mechanical clearances, or absorbing heat.

* * * * *

Lubricant-free compressor means a compressor that does not introduce any auxiliary substance into the compression chamber at any time during operation.

Lubricated compressor means a compressor that introduces an auxiliary substance into the compression chamber during compression.

* * * * *

Water-cooled compressor means a compressor that utilizes chilled water provided by an external system to cool both the compressed air and, if present, any auxiliary substance used to facilitate compression.

■ 6. Section 431.345 is added to read as follows:

§ 431.345 Energy conservation standards and effective dates.

(a) Each compressor that is manufactured starting on [*date five years after date of publication in the* **Federal Register**] and that:

(1) Is an air compressor;

(2) Is a rotary compressor;

(3) Is driven by a brushless electric motor;

(4) Is distributed in commerce with a compressor motor nominal horsepower greater than or equal to 1 and less than or equal to 500 horsepower (hp);

(5) Has a full-load operating pressure greater than or equal to 31 pounds per square inch gauge (psig) and less than or equal to 225 psig;

(6) Is manufactured alone or as a component of another piece of equipment; and

(7) Is in one of the equipment classes listed in the Table 1, must have a full-load package isentropic efficiency or part-load package isentropic efficiency that is not less than the appropriate "Minimum Package Isentropic Efficiency" value listed in Table 1.

TABLE 1—ENERGY CONSERVATION STANDARDS FOR CERTAIN COMPRESSORS

Equipment class	Minimum package isentropic efficiency	η_{Regr} (package isentropic efficiency reference curve)	d (percentage loss reduction)
Rotary; Lubricated; Air-cooled; Fixed-speed Compressor.	$\eta_{Regr} + (1 - \eta_{Regr}) * (d/100)$	$-0.00928 * \ln(.472 * V_1)^2 + 0.139 * \ln(.472 * V_1) + 0.271$.	−15
Rotary; Lubricated; Air-cooled; Variable-speed Compressor.	$\eta_{Regr} + (1 - \eta_{Regr}) * (d/100)$	$-0.0155 * \ln(.472 * V_1)^2 + 0.216 * \ln(.472 * V_1) + 0.00905$.	−10
Rotary; Lubricated; Water-cooled; Fixed-speed Compressor.	$.0235 + \eta_{Regr} + (1 - \eta_{Regr}) * (d/100)$	$-0.00928 * \ln(.472 * V_1)^2 + 0.139 * \ln(.472 * V_1) + 0.271$.	−15
Rotary; Lubricated; Watercooled; Variable-speed Compressor.	$.0235 + \eta_{Regr} + (1 - \eta_{Regr}) * (d/100)$	$-0.0155 * \ln(.472 * V_1)^2 + 0.216 * \ln(.472 * V_1) + 0.00905$.	−15
Rotary; Lubricant-free; Air-cooled; Fixed-speed Compressor.	$\eta_{Regr} + (1 - \eta_{Regr}) * (d/100)$	$A_1 * \ln(.472 * V_1)^2 + B_1 * \ln(.472 * V_1) + C_1$.	−11
Rotary; Lubricant-free; Air-cooled; Variable-speed.	$\eta_{Regr} + (1 - \eta_{Regr}) * (d/100)$	$A_2 * \ln(.472 * V_1)^2 + B_2 * \ln(.472 * V_1) + C_2$.	−13
Rotary; Lubricant-free; Water-cooled; Fixed-speed Compressor.	$A_3 * \ln(.472 * V_1)^2 + B_3 * \ln(.472 * V_1) + C_3 + \eta_{Regr} + (1 - \eta_{Regr}) * (d/100)$.	$A_1 * \ln(.472 * V_1)^2 + B_1 * \ln(.472 * V_1) + C_1$.	−11
Rotary; Lubricant-free; Water-cooled; Variable-speed Compressor.	$A_4 * \ln(.472 * V_1)^2 + B_4 * \ln(.472 * V_1) + C_4 + \eta_{Regr} + (1 - \eta_{Regr}) * (d/100)$.	$A_2 * \ln(.472 * V_1)^2 + B_2 * \ln(.472 * V_1) + C_2$.	−13

Instructions for the use of Table 1:

(1) To determine the standard level a compressor must meet, the correct equipment class must be identified. The descriptions are in the first column ("Equipment Class"); definitions for these descriptions are found in § 431.342.

(2) The second column ("Minimum Package Isentropic Efficiency") contains the applicable energy conservation standard level, provided in terms of package isentropic efficiency.

(3) For "Fixed-speed compressor" equipment classes, the relevant Package Isentropic Efficiency is Full-Load Package Isentropic Efficiency. For "Variable-speed compressor" equipment classes, the relevant Package Isentropic Efficiency is Part-Load Package Isentropic Efficiency. Both Full- and Part-Load Package Isentropic Efficiency are determined in accordance with the test procedure in § 431.344.

(4) The second column ("Minimum Package Isentropic Efficiency") references the third column ("η_{Regr}"), also a function of full-load actual volume flow rate, and the fourth column ("d"). The equations are provided separately to maintain consistency with the language of the preamble and analysis.

(5) The second and third columns contain the term V_1, which denotes compressor full-load actual volume flow rate, given in terms of actual cubic feet per minute ("acfm") in inlet air conditions and determined in accordance with the test procedure in § 431.344.

(6) The second and third columns contain the mathematical coefficients A_1, A_2, A_3, A_4, B_1, B_2, B_3, B_4, C_1, C_2, C_3, and C_4. Refer to Tables 1A, 1B, 1C, and 1D for the values of these coefficients.

TABLE 1A—CERTAIN COEFFICIENTS

Full-load actual volume flow rate range (acfm)	A_1	B_1	C_1
$0 < V_1 \leq 161$	−0.00928	0.139	0.191
$161 < V_1 \leq 2125$	0.00281	0.0344	0.417
$2125 < V_1$	−0.00928	0.139	0.271

TABLE 1B—CERTAIN COEFFICIENTS

Full-load actual volume flow rate range (acfm)	A_2	B_2	C_2
$0 < V_1 \leq 102$	−0.0155	0.216	−0.0984
$102 < V_1 \leq 1426$	0.000	0.0958	0.134
$1426 < V_1$	−0.0155	0.216	0.00905

TABLE 1C—CERTAIN COEFFICIENTS

Full-load actual volume flow rate range (acfm)	A_3	B_3	C_3
$0 < V_1 < 102$	0	0	0
$102 \leq V_1$	−0.00924	0.117	−0.315

TABLE 1D—CERTAIN COEFFICIENTS

Full-load actual volume flow rate range (acfm)	A_4	B_4	C_4
$0 < V_1 < 74$	0	0	0
$74 \leq V_1$	0.000173	0.00783	−0.0300

(b) [Reserved]

[FR Doc. 2016–11337 Filed 5–18–16; 8:45 am]

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Part III

Department of Housing and Urban Development

24 CFR Parts 30 and 206
Federal Housing Administration (FHA): Strengthening the Home Equity Conversion Mortgage Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 30 and 206

[Docket No. FR–5353–P–01]

RIN 2502–AI79

Federal Housing Administration (FHA): Strengthening the Home Equity Conversion Mortgage Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to codify several significant changes to FHA's Home Equity Conversion Mortgage program that were previously issued under the authority granted to HUD in the Housing and Economic Recovery Act of 2008 and the Reverse Mortgage Stabilization Act of 2013, and to make additional regulatory changes. The Home Equity Conversion Mortgage program is FHA's reverse mortgage program that enables seniors who have equity in their homes to withdraw a portion of the accumulated equity. The intent of the Home Equity Conversion Mortgage program is to ease the financial burden on elderly homeowners facing increased health, housing, and subsistence costs at a time of reduced income. FHA's mission is to serve underserved markets, which must be balanced with HUD's inherent, as well as, statutory obligation under the National Housing Act to protect the FHA insurance funds. The impacts of the recent financial crisis, including a decline in property values, shrinking retirement accounts, and changing borrower demographics placed seniors with Home Equity Conversion Mortgages at an increased risk of losing their homes due to their inability to make tax and insurance payments. During this time, the FHA HECM program was the only reverse mortgage program available for seniors. The above referenced economic and market factors, combined with certain program features, resulted in increased risk to the Mutual Mortgage Insurance Fund (MMIF). This rulemaking strengthens the FHA HECM program and codifies changes made under the Reverse Mortgage Stabilization Act of 2013 that reduce risk to the MMIF and increase the sustainability of this important program for seniors.

DATES: *Comment Due Date:* July 18, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Karin Hill, Senior Policy Advisor, Office of Single Family Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9282, Washington, DC 20410–8000; telephone number 202–402–3084 (this is not a toll-free number). Persons with hearing or speech challenges may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of Regulatory Action

Since the 2008 housing and economic recession, the Home Equity Conversion Mortgage (HECM) portfolio has experienced major borrower demographic and behavioral changes that have caused additional risk to the Mutual Mortgage Insurance Fund (MMIF). Some of the changes include shifting from a predominately adjustable interest rate mortgage with borrowers receiving payments over time using the line of credit, modified term, or modified tenure payment options to a fixed interest rate mortgage with borrowers drawing large amounts of HECM proceeds at the time of closing; younger borrowers with higher amounts of property indebtedness; and increasing property charge defaults. While program changes made prior to and during 2013, such as consolidating the HECM Standard and HECM Saver products, did improve the stability of the HECM program, the HECM portfolio has continued to experience volatility, with an estimated economic value of negative $1.2 billion as reported in FHA's Fiscal Year (FY) 2014 report to Congress. The HECM Portfolio received favorable actuarial results in 2015 reflecting the positive impact of program changes and an improving housing market. However it is critical to remain vigilant in monitoring program performance and policy to ensure the soundness of the MMIF.

Recognizing the need to stabilize the HECM program and ensure it remains a sustainable program, Congress passed, and the President signed into law, the Reverse Mortgage Stabilization Act of 2013 (RMSA). The RMSA gave FHA the tools to make, through mortgagee letter,[1] changes to the HECM program that are necessary to improve the fiscal safety and soundness of the program. Under this authority, FHA implemented a number of changes to the HECM program, including the Financial Assessment and Property Charge Funding Requirements; deferring the due and payable status for Eligible Non-Borrowing Spouses; limiting disbursements during the first 12 months of the HECM; and eliminating future draws on fixed interest rate HECMs. Through this rulemaking, FHA proposes to codify these policies, with amendments as discussed in the preamble. In addition, FHA proposes a number of new policies, which are discussed below and in the preamble. Many of these proposed changes will contribute to the stability of the HECM program and decrease risk to the MMIF, and others will provide needed updates to a program which began as a "demonstration program" and which has not been substantially updated in over 20 years.

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[1] Mortgagee letters issued under the authority granted to HUD in RMSA will be identified throughout this rule as RMSA mortgagee letters.

So that all regulatory requirements are codified in the HECM regulations, FHA also proposes to codify HECM program changes made by mortgagee letter[2] under the Housing and Economic Recovery Act of 2008 (HERA), which implemented the HECM for Purchase program and established new origination fee limits, and to amend the initial and monthly mortgage insurance premium (MIP) limits to correspond with statutory changes.

B. Summary of Major Provisions of the Regulatory Action in Question

In this rule, FHA proposes to codify existing policy which has been implemented by mortgagee letters under various statutory authorities; implement statutory changes; issue new origination and servicing policies; and clarify existing regulatory language. The main policy provisions are discussed below.

Implementing Statutory Changes and Codifying Existing Policies Implemented Under Statutory Authority

Financial Assessment and Property Charge Funding Requirements. As implemented through RMSA Mortgagee Letter 2014–21, mortgagees are required to perform a Financial Assessment of the prospective borrower prior to loan approval, which considers the prospective borrower's credit history, cash flow and residual income, extenuating circumstances, and compensating factors. Based on the results of the Financial Assessment, the mortgagee may require a Life Expectancy Set Aside (LESA) for the payment of certain property charges. For fixed interest rate HECMs, if a LESA is required, it may only be a Fully-Funded LESA. For adjustable interest rate HECMs, if a LESA is required, the mortgagee may require either a Partially- or Fully-Funded LESA. Proceeds from a Partially-Funded LESA will be disbursed to the borrower semi-annually to be used to assist in the payment of property charges; for Fully-Funded LESA, mortgagees disburse funds directly to the tax authority or insurance company for the payment of certain property charges when they are due. If the mortgagee does not require a Fully-Funded LESA, a borrower with an adjustable or fixed interest rate HECM, may elect to have a Fully-Funded LESA.

Deferring the Due and Payable Status for Eligible Non-Borrowing Spouses. RMSA Mortgagee Letter 2014–07, as amended by RMSA Mortgagee Letter 2015–02, established a Deferral Period, during which the due and payable status of a HECM is deferred after the death of the last surviving borrower for an Eligible Non-Borrowing Spouse, provided eligibility and all other FHA requirements are, and continue to be, satisfied. In addition, the new policy required the principal limit to be based on the age of the youngest borrower or Eligible Non-Borrowing Spouse, instead of only the youngest borrower. The new policy also provided for a 30-day period for the Eligible Non-Borrowing Spouse to cure a default and to reinstate a Deferral Period.

Limiting Disbursements during the First 12 Months of the HECM. Through RMSA Mortgagee Letter 2014–21, FHA limited initial disbursements for HECMs. For fixed and adjustable interest rate HECMs, the funds advanced to the borrower at closing and during the First 12-Month Disbursement Period could not exceed the greater of 60 percent of the principal limit; or Mandatory Obligations plus an additional 10 percent of the principal limit.

While FHA does not intend to change the current limit at this time, this rule provides flexibility for this limit to be changed in the future to respond to market changes or other factors. Specifically, this rule revises the percentages such that the 60 percent will never be less than 50 percent, and the additional percentage will never be less than 10 percent.

Eliminating Future Draws on Fixed Interest Rate HECMs. Ginnie Mae issued an All Participants Memorandum, APM 14–04, announcing that fixed interest rate HECM loans with future draws would be ineligible for securitization on or after June 1, 2014. As a result of APM 14–04, in RMSA Mortgagee Letter 2014–11, FHA limited the insurability of fixed interest rate mortgages under the HECM program to mortgages with the Single Lump Sum payment option, which does not allow for future draws after closing.

HECM for Purchase Program. HECM for Purchase program requirements are currently in HERA Mortgagee Letter 2009–11. This rule intends to codify the HECM for Purchase program requirements, with a few important changes. First, this rule would require prospective borrowers of HECM for Purchase transactions to complete the required HECM counseling prior to signing a sales contract and/or making an earnest money deposit, unless otherwise provided by the Commissioner, instead of allowing them to complete the counseling before or after the initial application is submitted to the mortgagee. In addition, amendments to the prohibition on interested party contributions are proposed in this rule. FHA proposes to permit the seller to pay fees required to be paid by the seller under state or local law and to purchase the Home Warranty policy, and to allow the Commissioner to define the types and parameters of other allowable interested party contributions through **Federal Register** notice for comment.

Allowable Loan Origination Fees and Charges. FHA implemented the loan origination fee limits imposed by HERA through HERA Mortgagee Letter 2008–34. In this rule, FHA proposes to clarify that such loan origination fee limits include expenses incurred in originating, processing and closing the HECM.

Amount of MIP. FHA proposes changes to the allowable initial and monthly MIP charges to reflect that HECMs are now obligations of the MMIF instead of the General Insurance Fund, and to reflect statutory amendments to the National Housing Act providing FHA with a wider range of acceptable MIP charges. FHA is not changing actual MIP charges, which may be set outside of the rulemaking process by mortgagee letter or other similar administrative issuance.

New Origination and Servicing Policies

Disclosure of Available HECM Program Options. This rule proposes to require mortgagees to inform potential HECM borrowers of all of the HECM products, features and options that FHA insures, in a manner acceptable to the Commissioner, irrespective of the particular HECM products offered by the mortgagee.

Capping Lifetime Interest Rate Adjustments for Adjustable Interest Rate Products. For annual adjustable interest rate HECMs, this rule proposes to cap periodic interest rate increases and decreases at one percentage point and cap lifetime interest rate increases and decreases at five percentage points. For monthly adjustable interest rate HECMs, this rule proposes to cap lifetime increases or decreases to the interest rate at five percentage points.

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[2] Mortgagee letters issued under the authority granted to HUD in HERA will be identified throughout this rule as HERA mortgagee letters.

Interest Rate Lock-In. This rule proposes to amend the definition of "expected average mortgage interest rate," to provide that the mortgagee, with the agreement of the borrower, may lock-in the expected average mortgage interest rate prior to the date of loan closing or establish the expected average mortgage interest rate on the date of loan closing.

Super Liens. This rule proposes to require, as a condition for a HECM to be eligible for loan assignment, that the HECM mortgage be in lien status prior to homeowners association and condo association liens.

Appraisal Requirements. This rule proposes to require the mortgagee to have the property appraised no later than 30 days after receipt of the request by an applicable party in connection with a pending property sale; the property must be appraised within 30 days of a foreclosure sale.

Limiting Reimbursement of Property Charge Advances. This rule proposes to limit insurance claim reimbursement to a mortgagee to two years of payments for: (a) Taxes, ground rents, water rates, and utility charges that can result in liens prior to the mortgage; (b) special assessments, which are noted on the application for insurance or which become liens after the insurance of the mortgage; and (c) hazard insurance premiums on the mortgaged property not in excess of a reasonable rate. The rule also provides flexibility to allow the Commissioner to approve an extension of the two-year limit.

Including Utilities as Property Charges. FHA proposes to amend the definition of "property charges" to include utilities as a borrower responsibility, when failure to pay such utilities would result in a lien and would potentially trigger a due and payable event.

Acquisition and Sale of Property. This rule proposes to replace the requirement that the property be sold for at least 95 percent of the appraised value with a more flexible provision which allows the Commissioner to lower this amount as necessary to adapt to market conditions and other factors. This rule also proposes to require that the closing costs from the sale be no more than 11 percent of the sales price.

Cash for Keys. This rule proposes to incentivize parties with legal authority to dispose of a property that serves as the security for a HECM to complete a deed in lieu of foreclosure more quickly.

C. Costs and Benefits

This proposed rule will codify program changes that have reduced risks to both FHA and to borrowers: Implementation of limits on fixed-rate full draw loans (full draw loans expose FHA to high risk of insurance loss, and such loans are often not sustainable solutions for borrowers since they do not provide the borrower with future access to HECM proceeds); a Financial Assessment to enable mortgagees to determine if the HECM enables borrowers to comply with the mortgage requirements and that the HECM is a sustainable solution for borrowers; protection to Eligible Non-Borrowing Spouses from foreclosure after the death of the last borrower, and removed incentives for borrowers to obtain higher principal limits by using only the age of the older spouse through quit-claiming the younger spouse from the title; and a Property Charge Set Aside which will reduce the incidence of borrower defaults due to non-compliance with the mortgage obligation for the borrower to make timely payment of property taxes, hazard insurance, and other charges. The new changes to the HECM program will reduce foreclosures arising from these defaults, which will benefit FHA, borrowers, and communities where properties are located; give FHA more flexibility to accept short sales on properties where market conditions warrant; provide homeowners with the ability to purchase a more suitable home without incurring the costs of two loan closings and offer greater interest rate protection to borrowers who choose an adjustable interest rate HECM through new annual and life of loan rate adjustment caps. Together, these changes may initially reduce HECM origination volume, although the potential demand for HECM is expected to remain high.

The social benefits that may be realized by this rule also include reducing resolution costs and borrower distress in cases where loans are no longer sustainable; improved sustainability of the MMIF, which would enhance the choice and wellbeing of future borrowers; and increased protections for borrowers, including those afforded non-borrowing spouses, those resulting from transfer of more interest rate risk from borrowers to lenders (who are likely better able to manage this risk), and those from improving the ultimate sustainability of HECM loans related to financial assessment changes.

The policies discussed in this rule may reduce FHA HECM insurance endorsements by $1.9 billion per year, representing transfers from potential HECM borrowers to other debtors; reduce FHA MMIF credit subsidy (equivalent to increasing the economic value to FHA) for the HECM portfolio by $42 million per year, representing transfers from mortgagees to FHA; reduce foreclosures due to tax and insurance default by up to 6,000 cases (totaling about $1.5 billion in loan amount) per year, along with reduction in ancillary costs of foreclosures to neighborhoods and local governments; reduce loan origination costs for 2,000 "HECM for Purchase" borrowers, saving them $12 million per year representing transfers from mortgagees to borrowers; and increase margins on adjustable interest rate HECMs paid by all borrowers, resulting in transfers from borrowers to mortgagees of between $21.7 and $27.2 million per year, but which will eventually be offset by approximately equal transfers from mortgagees to those borrowers whose loans are seasoned in rising rate environments.

Other costs from the rule would include reduced borrowers' choice and the well-being of those borrowers who may not meet the eligibility requirements, or who no longer have access to as much upfront cash. The table below and the bullet points that follow display the benefits, costs, and transfers of this proposed rule.

Benefits	Costs	Transfers
4,400 fewer foreclosures per year from tax and insurance default. • $1.1 billion aggregate unpaid principal balance	Reduce FHA HECM insurance endorsements by $1.9 billion per year, thereby reducing choices for potential HECM borrowers to access home equity.	Increase margins on HECM ARMs paid by all borrowers, resulting in transfers from borrowers to mortgagees of between $21.7 and $27.2 million per year. • These transfers will eventually be offset by approximately equal transfers from mortgagees to those borrowers whose loans are seasoned in rising rate environments.

Benefits	Costs	Transfers
• Reduction in ancillary costs of foreclosures to neighborhoods, borrowers, and local governments Reduced loan origination costs for 2,000 "HECM for Purchase" borrowers per year. • Total benefit of $12 million per year • Frees resources for other purposes	No additional costs	No additional transfers.

Other benefits include the following:

- Improving the financial condition of the FHA MMIF due to:
  - ○ Fewer foreclosures;
  - ○ Persistently lower insured loan balances over time, due to limits on initial disbursement; and
  - ○ More flexibility for FHA to accept short sales on properties where market conditions warrant.
- Improving public perception of HECM regarding overall program viability and public benefits derived from program
  - ○ Reduces risks to both FHA and to borrowers associated with fixed-rate full draw loans (full draw loans expose FHA to high risk of insurance loss, and such loans are often not suitable for borrowers);
  - ○ Helps borrowers and their housing counselors determine if a HECM is a sustainable option for them through the use of a Financial Assessment;
  - ○ Provides protection to Eligible Non-Borrowing Spouses from foreclosure, and removes incentives for borrowers to obtain higher principal limits than they would otherwise be eligible for by using only the age of the older spouse; and
  - ○ Reduces the incidence of borrower defaults due to non-compliance with the mortgage obligation.
- Providing greater interest rate protection to borrowers who choose an ARM through new annual and life-of-loan rate adjustment caps

II. Background

The HECM program, authorized by section 255 of the National Housing Act (NHA) (12 U.S.C. 1715z–20), is FHA's reverse mortgage insurance program. Subsection 255(c) of the NHA gives FHA the authority to establish the terms and conditions under which it will insure HECMs. The regulations for this program are codified in 24 CFR part 206. The HECM program enables FHA-approved mortgagees to extend insured mortgage financing to eligible borrowers, 62 years of age or older, who want to convert the equity in their homes into liquid assets. The withdrawal of equity may take a variety of forms, as authorized by the NHA and selected by the borrower. The home, which serves as security for the mortgage, must be, and continue to be, the borrower's principal residence during the life of the borrower. For adjustable interest rate HECMs, equity payments to the borrower may be in the form of monthly disbursements for life or a fixed term of years, disbursements from a line of credit advance or a combination of monthly disbursements and a line of credit. For fixed interest rate HECMs, equity payments to the borrower must be in the form of a single lump sum disbursement at closing.

The maximum amount of equity in the home that is available to a borrower under a HECM loan is the "principal limit" that is calculated for that loan. The borrower retains ownership of the property and may sell the home at any time keeping any residual sale proceeds in excess of the outstanding loan balance. Until the mortgage is repaid, and regardless of whether or not additional disbursements under the mortgage are permissible, interest on the mortgage, mortgage insurance premiums, and servicing charges, where applicable, continue to accrue.

The Housing and Economic Recovery Act of 2008 (Public Law 110–289, approved July 30, 2008) (HERA) impacted the HECM program in a number of important ways, including providing for the HECM for Purchase program, establishing new origination fee limits, and transferring obligations arising under the HECM program to the Mutual Mortgage Insurance Fund (MMIF).

First, HERA provides HECM borrowers with the opportunity to purchase a new principal residence with HECM loan proceeds, known as the HECM for Purchase program. Specifically, section 2122(a)(9) of HERA amended section 255 of the NHA to authorize FHA to insure HECMs used for the purchase of 1- to 4-family dwelling units. In HERA Mortgagee Letter 2008–33,[3] issued on October 20, 2008, FHA provided that these new HECM for Purchase transactions must satisfy existing HECM requirements and the provisions announced in the HERA mortgagee letter. Following the publication of this HERA mortgagee letter, the reverse mortgage industry sought additional guidance and clarification concerning the HECM for Purchase program. On March 27, 2009, FHA issued HERA Mortgagee Letter 2009–11, which contained additional guidance and therefore superseded HERA Mortgagee Letter 2008–33. It is FHA's intent to codify the HECM for Purchase program requirements throughout FHA's part 206 regulations, except as otherwise discussed in this preamble.[4]

On October 31, 2008, FHA issued HERA Mortgagee Letter 2008–34, which, consistent with HERA, established new limits on the origination fee that may be charged for HECMs. Specifically, the loan origination fee limit is the greater of $2,500; or two percent of the maximum claim amount of the mortgage, up to a maximum claim amount of $200,000, plus one percent of any portion of the maximum claim amount that is greater than $200,000, but not to exceed $6,000.

Section 2118(b)(2) of HERA transferred obligations arising under the HECM program, for loans endorsed on or after October 1, 2008, from the FHA General Insurance Fund to the MMIF. By statute, the Secretary has a fiduciary duty to protect the MMIF.[5] In addition, subsection 202(a)(6) of the NHA provides that if, pursuant to an independent actuarial study of the MMIF required under subsection 202(a)(4), the Secretary determines that the MMIF is not meeting the operational goals established under subsection 202(a)(7) or there is a substantial probability that the MMIF will not maintain its established target subsidy rate, the Secretary may either make programmatic adjustments under this title as necessary to reduce the risk to the MMIF, or make appropriate premium adjustments.

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[3] Mortgagee letters issued under the authority granted to HUD in HERA will be identified throughout this rule as HERA mortgagee letters.

[4] The following sections of HERA Mortgagee Letter 2009–11 are guidance in their entirety and will not be codified in this rule: Ineligible Property Types, Verification of Funding Sources, Gap Financing, Suspensions and Debarments, Enhanced Counseling, Right of Rescission, Closing Guidance, Data Entry Requirements, and Required Documents for Endorsement. Other guidance provisions in this HERA mortgagee letter are identified elsewhere in this preamble.

[5] See subsection 202(a)(3) of the NHA.

FHA's FY 2012 report to Congress on the financial status of the MMIF, issued November 16, 2012, reported substantial stress in the HECM program and projected the economic value of the HECM portfolio to be negative $2.8 billion.[6] The losses to the MMIF apparent in the FY 2012 report to Congress provided the impetus for the passage of the Reverse Mortgage Stabilization Act of 2013, and the resulting administrative actions by FHA, which are discussed below in this preamble. Subsequent reports to Congress on the status of the MMIF have continued to show substantial stress due to the HECM portfolio, necessitating the additional programmatic changes proposed in this rule. For example, although the FY 2013 report to Congress showed a strengthened capital position of the HECM portfolio, that was the result of a combination of a mandatory appropriation of $1.7 billion and a transfer of more than $4 billion from the Forward loan portfolio to the HECM portfolio.[7] FHA's FY 2014 report to Congress showed that the estimated economic value of the HECM portfolio changed from a positive $6.5 billion to a negative $1.2 billion.[8] These projected deficits were the result of many factors, including the impact of the recession, the housing crisis, borrowers living longer than anticipated, and the shift from borrowers selecting adjustable interest rate HECMs with disbursements taken over time to fixed interest rate transactions with larger disbursements at closing. The favorable actuarial results the HECM Portfolio received in 2015 reflect the positive impact of program changes made in response to 2012 through 2014 performance and an improving housing market.

In order to mitigate the projected negative impact of future HECM books of business on the MMIF and to ensure the continued availability of the program as a sustainable solution for the senior borrower, immediate action was imperative. Congress passed the Reverse Mortgage Stabilization Act of 2013 (RMSA), which was signed into law on August 9, 2013 (Pub. L. 113–29), giving HUD the tools to make immediate and necessary changes to the HECM program. Specifically, RMSA amends subsection 255(h) of the NHA to authorize the Secretary to "establish, by notice or mortgagee letter, any additional or alternative requirements that the Secretary, in the Secretary's discretion, determines are necessary to improve the fiscal safety and soundness of the HECM program." Using the authority granted to HUD by RMSA, FHA made several critical changes to the HECM program through mortgagee letters,[9] and FHA proposes to codify, and in some cases modify, those program changes in this rule.

FHA's first action under RMSA was the issuance of RMSA Mortgagee Letter 2013–27[10] on September 3, 2013, titled "Changes to the Home Equity Conversion Mortgage Program Requirements." The RMSA mortgagee letter implemented several changes to the HECM program, which included initial disbursement limits, the Single Lump Sum payment option,[11] a Financial Assessment of HECM borrowers that assesses their capacity and willingness to meet his/her documented financial obligations and the ability to comply with the obligations of the HECM and policy guidelines regarding the payment of property charges, and a LESA. FHA subsequently issued RMSA Mortgagee Letter 2013–33[12] on September 25, 2013, to elaborate on these policy changes and make certain clarifying changes.

FHA solicited public comment on RMSA Mortgagee Letter 2013–27 through a notice published on September 12, 2013, in the **Federal Register** at 78 FR 56576 titled "Changes to the Home Equity Conversion Mortgage Program Requirements: Financial Assessment—Solicitation of Comment." The public comment period for the September 12, 2013, notice closed on October 15, 2013, and FHA received 13 public comments.[13] Comments were received from nonprofit, nongovernmental and advocacy organizations serving seniors, a trade organization for financial institutions involved in the origination and securitization of reverse mortgages, a reverse mortgage firm, and other interested parties. In general, the comments applauded FHA's efforts and supported the establishment of some type of Financial Assessment to determine whether or not a prospective HECM borrower will be able to meet the financial obligations of the mortgage and whether the HECM is a sustainable option for the senior. However, many commenters expressed concern that the new Financial Assessment requirements were unnecessarily onerous to accomplishing FHA's goals.

In response to these public comments, and in further reliance on the authority of the RMSA, FHA issued RMSA Mortgagee Letter 2014–21, titled "Revised Changes to the Home Equity Conversion Mortgage (HECM) Program Requirements," on November 10, 2014. This RMSA mortgagee letter consolidated and revised policy requirements issued under RMSA Mortgagee Letters 2013–27 and 2013–33, and superseded those mortgagee letters in their entirety. Of significance, this mortgagee letter revised FHA's HECM credit standing and Financial Assessment requirements, as well as the Property Charge Funding Requirements, and set policy for unused LESA funds during a Deferral Period[14] and upon termination of the loan. This RMSA mortgagee letter also revised requirements announced in RMSA Mortgagee Letter 2014–11, discussed below, to clarify that a borrower with a fixed interest rate HECM may be reimbursed for the cost of materials, under certain conditions, when repairs must be completed after loan closing.

On April 25, 2014, FHA established additional and alternative program requirements concerning due and payable status for HECMs with Case Numbers assigned on or after August 4, 2014, where there is a Non-Borrowing Spouse at the time of loan closing, through the issuance of RMSA Mortgagee Letter 2014–07. Subsection 255(j) of the NHA provides that a HECM that does not contain a "Safeguard to Prevent Displacement of Homeowner," which defers repayment of the loan obligation until "the homeowner's death, the sale of the home, or the occurrence of other events specified in regulations of the Secretary," is ineligible for FHA insurance. FHA has, since the inception of the HECM program, interpreted this provision in its regulations as requiring HECMs be called due and payable upon the death of the last surviving borrower, the sale of the home, and other conditions, including the failure to reside in the property and the failure to pay required taxes. FHA continues to believe that its original interpretation gives full force and effect to the intent of the statute. Nevertheless, an alternative interpretation of subsection 255(j) of the NHA, which would extend the mortgage insurance eligibility requirements concerning the safeguard to the borrower and any Eligible Non-Borrowing Spouse of the borrower at the time of origination, has been advanced. RMSA Mortgagee Letter 2014–07, as amended by RMSA Mortgagee Letter 2015–02,[15] implemented, prospectively only, this alternative interpretation of subsection 255(j) of the NHA in order to ensure the viability of the HECM program and the MMIF.

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[6] See *http://portal.hud.gov/hudportal/documents/huddoc?id=F12MMIFundRepCong111612.pdf.*

[7] See *http://portal.hud.gov/hudportal/documents/huddoc?id=FY2013RepCongFinStMMIFund.pdf.*

[8] See *http://portal.hud.gov/hudportal/documents/huddoc?id=FY2014FHAAnnRep11_17_14.pdf.*

[9] Mortgagee letters issued under the authority granted to HUD in RMSA will be identified throughout this rule as RMSA mortgagee letters.

[10] RMSA Mortgagee Letter 2013–27 was superseded in its entirety by RMSA Mortgagee Letter 2014–21.

[11] FHA initially referred to this payment option as the "Single Disbursement Lump Sum" payment option, but for simplicity, FHA is renaming this payment option the "Single Lump Sum" payment option.

[12] RMSA Mortgagee Letter 2013–33 was superseded in its entirety by RMSA Mortgagee Letter 2014–21.

[13] Comment 0011 was a duplicate of Comment 0012 and has not been counted in this number. Comment 0015 was received on October 22, 2013, but FHA accepted submission of that comment.

[14] The Deferral Period is discussed later in the preamble in relation to RMSA Mortgagee Letter 2014–07.

In general, RMSA Mortgagee Letter 2014–07 established a Deferral Period, during which the due and payable status resulting from the death of the last surviving borrower of a HECM is deferred based on the continued satisfaction of the established requirements for a Non-Borrowing Spouse and all other FHA requirements. This RMSA mortgagee letter also required that the mortgagee base the principal limit on the age of the youngest borrower or Non-Borrowing Spouse, instead of only the youngest borrower.

FHA solicited public comment on RMSA Mortgagee Letter 2014–07 through a notice published on May 2, 2014, in the **Federal Register** at 79 FR 25147 titled "Home Equity Conversion Mortgage (HECM) Program: Non-Borrowing Spouse—Solicitation of Comment." The public comment period on the May 2, 2014, notice closed on June 2, 2014, and FHA received 10 public comments. Comments were received from a HECM servicer, a national reverse mortgage association, and other interested parties. In general, many comments applauded and supported FHA's efforts to provide protections to Non-Borrowing Spouses and ensure the viability of the HECM program. However, commenters sought clarification on many issues.

In response to the public comments, FHA issued RMSA Mortgagee Letter 2015–02 to amend, and where conflicts were present, to supersede, RMSA Mortgagee Letter 2014–07. In general, RMSA Mortgagee Letter 2015–02 defined two categories of Non-Borrowing Spouses: Ineligible Non-Borrowing Spouse and Eligible Non-Borrowing Spouse. The Ineligible Non-Borrowing Spouse is a Non-Borrowing Spouse who is ineligible to receive the benefit of the Deferral Period, and as a result, whose age will not be used to determine the principal limit. The Eligible Non-Borrowing Spouse is a Non-Borrowing Spouse, who, at the time of origination, is eligible to receive the benefit of the Deferral Period, and as a result, whose age, if younger than the age of the borrower(s), will be used to determine the principal limit. The RMSA mortgagee letter also provided for a 30-day period to cure a default and reinstate a Deferral Period if an Eligible Non-Borrowing Spouse fails to meet a required obligation of the Mortgage and provided clarification for the "Seasoning Requirements for Existing Non-HECM Liens" section of RMSA Mortgagee Letter 2014–21, discussed above.

On June 18, 2014, FHA issued RMSA Mortgagee Letter 2014–11, titled "Home Equity Conversion Mortgage (HECM) Program: Limit on Insurability of Fixed Interest Rate Products under the HECM Program." Prior to FHA's issuance of this RMSA mortgagee letter, Ginnie Mae issued an All Participants Memorandum, APM 14–04, announcing that fixed interest rate HECM loans with future draws would be ineligible for securitization on or after June 1, 2014.[16] As a result of APM 14–04, FHA found it necessary to limit the insurability of fixed interest rate mortgages under the HECM program to mortgages with the Single Lump Sum payment option, and to disallow the use of the Single Lump Sum payment option for adjustable interest rate HECMs, which FHA did through the issuance of RMSA Mortgagee Letter 2014–11.

FHA solicited public comment on RMSA Mortgagee Letter 2014–11 through a notice published on July 10, 2014, in the **Federal Register** at 79 FR 39408 titled "Home Equity Conversion Mortgage (HECM) Program: Limit on Insurability of Fixed Interest Rate Products Under the HECM Program—Solicitation of Comment." The public comment period for the July 10, 2014, notice closed on August 11, 2014, and FHA received 2 public comments. In response to public comments, and as mentioned above, RMSA Mortgagee Letter 2014–21 revised requirements announced in RMSA Mortgagee Letter 2014–11.

The mortgagee letters discussed above, which were issued under HERA and RMSA, contain both program changes implemented through requirements that, except for the authority granted by HERA or RMSA, would have been issued in the format of regulations rather than another form of notice, and material that is typically characterized as guidance. It is FHA's intent to codify only the regulatory content of Mortgagee Letters 2008–34, 2009–11, 2014–07, 2014–11, 2014–21, and 2015–02. These mortgagee letters will remain in effect for HECMs to which they are applicable and which have FHA Case Numbers assigned prior to the effective date of a final rule.

III. This Proposed Rule

The regulatory changes proposed by this rule are summarized below. For ease of review, section III.A. of this preamble pertains to changes made to 24 CFR part 30 and section III.B. of this preamble pertains to changes made to 24 CFR part 206. Section III.B. is organized into three sections. Section III.B.1. discusses changes which are proposed to be applied across the board to FHA's part 206 regulations. Section III.B.2. includes the remaining substantive HECM program amendments proposed by this rule, in order of appearance in the codified regulations, and identifies whether the amendment simply codifies a program change already implemented by mortgagee letter; codifies and further amends a program change already implemented by mortgagee letter, taking into account changed circumstances and public comments received on various **Federal Register** notices issued for comment; or is a new program change. Finally, the technical amendments are discussed in section III.B.3. of this preamble.

A. Civil Money Penalties: Certain Prohibited Conduct—24 CFR Part 30

Currently, HUD's regulation at 24 CFR 30.35, which sets HUD's policy regarding taking civil money penalty action against mortgagees or lenders, does not include references to the requirements of FHA's HECM program in 24 CFR part 206. In this rule, FHA proposes new amendments which would expand two provisions to include specific reference to the HECM regulations. First, in § 30.35(a)(8), this rule proposes to allow the Mortgagee Review Board to initiate a civil money penalty action against a mortgagee or lender who knowingly and materially fails to timely submit documents that are complete and accurate in connection with a claim for insurance benefits in accordance with § 206.127. Second, in § 30.35(a)(10), this rule proposes to allow the Mortgagee Review Board to initiate a civil money penalty action against a mortgagee or lender who knowingly and materially fails to service FHA mortgages in accordance with the requirements of 24 CFR part 206.

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[15] RMSA Mortgagee Letter 2015–02 is discussed later in this preamble.

[16] See *http://www.ginniemae.gov/doing_business_with_ginniemae/issuer_resources/Pages/mbsguideapmslibdisppage.aspx?ParamID=27.*

B. Home Equity Conversion Mortgage Insurance—24 CFR Part 206

1. Global Changes to Part 206

Throughout the regulations, the term "Secretary" will be changed to "Commissioner" because "Commissioner," rather than "Secretary" is the term used to refer to the official who heads FHA and in most cases, "FHA" will replace "HUD" to provide more specificity. In addition, in most cases, the term "mortgagor" will be changed to "borrower" which will be defined in § 206.3 to mean a mortgagor who is an original borrower under the Loan Agreement and Note, not including a borrower's successors and assigns. In most cases, the term "payment" will be changed to "disbursement". These changes are designed to help bring consistency to the terminology used regarding the HECM program and eliminate confusion about the meaning of certain terms.

2. Substantive Changes to Regulations

Subpart A—General

Definitions (§ 206.3)

Borrower. In order to distinguish borrowers from mortgagors, this rule proposes to add a definition of "borrower" to mean a mortgagor who is an original borrower under the HECM Loan Agreement and Note, not including a borrower's successors and assigns. Each borrower shall be on title, shall also be a mortgagor, and shall sign all applicable HECM loan documents.

Borrower's Advance. The definition of "Borrower's Advance" originated in RMSA Mortgagee Letter 2014–11, and was subsequently updated in RMSA Mortgagee Letter 2014–21. Taken together, those RMSA mortgagee letters provided that "Borrower's Advance" means funds advanced to the borrower at the closing of a fixed interest rate HECM which may not exceed the greater of 60 percent of the principal limit; or Mandatory Obligations plus an additional 10 percent of the principal limit. In this rule, FHA proposes to codify a definition of "Borrower's Advance" that does not include the actual calculation, which can more appropriately be found in the section regarding the calculation of payments, § 206.25, such that the "Borrower's Advance" would be the funds advanced to the borrower at the closing of a fixed interest rate HECM. In this rule, FHA proposes to make changes to the calculation of the Borrower's Advance to allow the Commissioner flexibility in setting these amounts, but such changes are discussed later in this preamble in relation to § 206.25.

CMT Index. This proposed rule eliminates the definition of *One-month Constant Maturity Treasury (CMT) Index* and instead adds a more general definition of *CMT Index,* since FHA's regulations also permit the use of the one-year CMT Index.

Commissioner. This proposed rule adds a definition of "Commissioner" to mean the Federal Housing Commissioner or the Commissioner's authorized representative, and as a result of this addition, eliminates the now unnecessary definition of "Secretary".

Contract of insurance. FHA proposes to define "contract of insurance" instead of citing to 24 CFR 203.251(j), and proposes to amend the definition to specifically be applicable to FHA's part 206 regulations such that "contract of insurance" means the agreement evidenced by the issuance of a Mortgage Insurance Certificate or by the endorsement of the Commissioner upon the credit instrument given in connection with an insured mortgage, incorporating by reference regulations in subpart C of this part and the applicable provisions of the NHA.

Deferral Period. The term "Deferral Period" was introduced and defined in RMSA Mortgagee Letter 2014–07, and subsequently updated in RMSA Mortgagee Letter 2015–02. Taken together, those RMSA mortgagee letters provide that "Deferral Period" means the period of time following the death of the last surviving borrower during which the due and payable status of a HECM is deferred for an Eligible Non-Borrowing Spouse provided that the Qualifying Attributes and all other FHA requirements continue to be satisfied. FHA proposes to codify this definition.

Eligible Non-Borrowing Spouse. The term "Eligible Non-Borrowing Spouse" was introduced in RMSA Mortgagee Letter 2015–02. "Eligible Non-Borrowing Spouse" means a Non-Borrowing Spouse who meets all Qualifying Attributes for a Deferral Period. FHA proposes to codify this definition.

Estate planning service firm. This rule proposes to update the definition of "estate planning service firm" in § 206.3 to conform to changes made to § 206.41 which specify counseling requirements for Eligible and Ineligible Non-Borrowing Spouses. In addition, because participating agencies are approved under subpart B of 24 CFR part 214, not § 206.41, this rule proposes to change references regarding the approval of participating agencies in § 206.41 to more accurately reflect the requirements of subpart B of 24 CFR part 214.

Expected average mortgage interest rate. "Expected average mortgage interest rate" is currently defined at § 206.3 to mean the interest rate used to calculate the principal limit and the future disbursements to the borrower. RMSA Mortgagee Letter 2014–11 amended the definition of "expected average mortgage interest rate" for fixed interest rate HECMs to provide that the expected average mortgage interest rate is the same as the fixed mortgage (Note) interest rate and is set simultaneously with the fixed interest rate. This rule proposes to codify that amendment, and to also further amend the definition of "expected average mortgage interest rate" due to an inadvertent past error. On July 20, 2007, at 72 FR 40048, FHA published a final rule adding additional indices to adjust interest rates for FHA-insured single family mortgage loans, including HECM loans. The July 20, 2007, final rule inadvertently amended the definition in the HECM regulations of "expected average mortgage interest rate" to mean that the expected average mortgage interest rate is "[e]stablished based on the date the initial loan is signed by the mortgagor." However, industry practice has been that the mortgagee may lock-in the expected average mortgage interest rate for HECMs at the time the initial loan application is signed by the borrower or prior to the date of closing. Locking in the expected average mortgage interest rate provides HECM borrowers with the comfort of knowing that the expected average mortgage interest rate cannot increase during the interest rate lock-in period and subsequently reduce the principal limit. FHA therefore proposes to amend the definition of "expected average mortgage interest rate," to provide that the mortgagee, with the agreement of the borrower, may lock in the expected average mortgage interest rate prior to the date of loan closing or establish the expected average mortgage interest rate on the date of loan closing. In accordance with changes proposed to § 206.21(b), if the expected average mortgage interest rate is locked in prior to closing, the margin on an adjustable interest rate loan is also locked in at the same time and is the difference between the expected average mortgage interest rate and the value of the appropriate index at the time of rate lock-in.

First 12-Month Disbursement Period. This proposed rule codifies the definition of "First 12-Month Disbursement Period" from RMSA Mortgagee Letter 2014–21 to mean the period beginning on the day of loan closing and ending on the day before the loan closing anniversary date. When the day before the anniversary date of loan closing falls on a Federally-observed holiday, Saturday, or Sunday, the end period will be on the next business day after the Federally-observed holiday, Saturday, or Sunday.

HECM. This proposed rule adds a definition of "HECM" to mean a Home Equity Conversion Mortgage.

HECM counselor. The current definition of "Home Equity Conversion Mortgage (HECM) counselor" in § 206.3 defines a HECM counselor as an "individual who provides statutorily required counseling to clients who may be eligible for or interested in obtaining an FHA-insured HECM . . ." However, it has recently come to FHA's attention that *interested* parties may be providing counseling, and their financial relationship with prospective or current HECM borrowers or Non-Borrowing Spouses may impact their provision of counseling services. In § 206.3, FHA proposes to change the term "Home Equity Conversion Mortgage (HECM) counselor" to "HECM counselor", for simplicity, and to amend the definition to state, consistent with subsection 255(d)(2)(B) of the NHA, that a HECM counselor must be an independent third-party that is currently active on FHA's HECM Counselor Roster and that is not, either directly or indirectly, associated with or compensated by, a party involved in originating, servicing, or funding the HECM, or the sale of annuities, investments, long-term care insurance or any other type of financial or insurance product.

Ineligible Non-Borrowing Spouse. The term "Ineligible Non-Borrowing Spouse" was introduced in RMSA Mortgagee Letter 2015–02 to mean a Non-Borrowing Spouse who does not meet all Qualifying Attributes for a Deferral Period. FHA proposes to codify this definition.

Initial Disbursement Limit. The phrase "Initial Disbursement Limit" is defined in RMSA Mortgagee Letter 2014–21 to mean the maximum disbursement to a borrower of an adjustable interest rate HECM allowed at loan closing and during the First 12-Month Disbursement Period, which is the greater of 60 percent of the principal limit; or the sum of Mandatory Obligations and 10 percent of the principal limit. In this rule, FHA proposes to codify a definition of "Initial Disbursement Limit" that does not include the actual calculation, which can more appropriately be found in the section regarding the calculation of payments, § 206.25, such that the "Initial Disbursement Limit" would be the maximum amount of funds that can be advanced to the borrower of an adjustable interest rate HECM at loan closing and during the First 12-Month Disbursement Period. FHA proposes to make changes to the calculation of the Initial Disbursement Limit to allow the Commissioner flexibility in setting the limit, but such changes are discussed later in the preamble in relation to § 206.25.

Loan documents. FHA currently defines "mortgage" to include the credit instrument, or Note, secured by the lien, and the loan agreement. In this rulemaking, FHA takes the opportunity to add a specific definition for "loan documents" which would include the credit instrument, or Note, secured by the lien, and the loan agreement because these documents are not actually the mortgage.

Mandatory Obligations. The term "Mandatory Obligations" was defined in RMSA Mortgagee Letter 2014–21 as the fees and charges incurred in connection with the origination of the HECM that are requirements for loan approval or disbursements for a Repair Set Aside. In this rule, FHA proposes to clarify that Mandatory Obligations are fees and charges incurred in connection with the origination of the HECM that are requirements for loan approval and which will be paid either at closing or during the First 12-Month Disbursement Period in accordance with § 206.25. In § 206.25, as discussed later in this preamble, FHA proposes to codify the lists of Mandatory Obligations from RMSA Mortgagee Letter 2014–21, but also proposes to amend the lists to give the Commissioner the flexibility to include, as Mandatory Obligations, other charges or fees established through notice.[17]

Maximum claim amount. The "maximum claim amount" is currently defined in § 206.3 as the lesser of the appraised value of the property, as determined by the appraisal used in underwriting the loan, or the maximum dollar amount for an area established by the Secretary for a one-family residence under subsection 203(b)(2) of the NHA, as adjusted where applicable under section 214 of the NHA, as of the date of loan closing. In this rule, FHA proposes to instead reference subsections 255(g) and (m) of the NHA because section 255 of the NHA contains the statutory requirements of the HECM program. FHA also proposes to include, as an option for determining the maximum claim amount, the sales price of the property being purchased for the sole purpose of being the principal residence, such that the "maximum claim amount" means the lesser of the appraised value of the property, the sales price of the property, or the national mortgage limit, which is consistent with the maximum claim amount calculation in HERA Mortgagee Letter 2009–11.

MIP. FHA proposes to amend the definition of "MIP" in § 206.3 to replace the cross-cite to 24 CFR 203.251(k) with the actual definition, such that "MIP" means the mortgage insurance premium paid by the mortgagee to the Commissioner in consideration of the contract of insurance.

Mortgage. In an effort to provide greater clarity, FHA proposes to remove the last sentence in the definition of "mortgage" in § 206.3. The loan documents which are not actually the mortgage will be more appropriately defined under a new definition of "loan documents" and FHA will eliminate the unnecessary and partially inaccurate reference to the parties to the loan agreement.

Mortgagee. FHA proposes to amend the definition of "mortgagee" in § 206.3 to replace the reference to subsection 255(b)(2) of the NHA with the actual definition, such that "mortgagee" means the original lender under a mortgage and its successors and assigns, as are approved by the Commissioner.

Mortgagor. In order to distinguish HECM mortgagors from HECM borrowers, FHA proposes to clarify the definition of a HECM "mortgagor" in § 206.3 to mean each original HECM mortgagor under a HECM and his heirs, executors, administrators and assigns. HECM mortgagors also include non-borrowing owners who are on title to the property and, consequently, must sign the HECM Mortgage but do not sign the HECM Note or Loan Agreement, and therefore are not borrowers. A Non-Borrowing Spouse may or may not be a mortgagor; for example, in a community property state, a Non-Borrowing Spouse will always be a mortgagor.

Non-Borrowing Spouse. The term "Non-Borrowing Spouse" was introduced in RMSA Mortgagee Letter 2014–07 and means the spouse, as defined by the law of the state in which the spouse and borrower reside or the state of celebration, of the HECM borrower at the time of closing and who is also not a borrower. FHA proposes to codify this definition.

Participating agency. FHA proposes to use the term "participating agency" in § 206.302 and in the definition of "estate planning service firm" in

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[17] The term "notice" includes mortgagee letters and other forms of written notice, unless otherwise specified.

§ 206.3, and therefore proposes to provide a definition for the term in § 206.3. The definition would mirror the definition in the Housing Counseling regulations at § 214.3, such that "participating agency" means all housing counseling and intermediary organizations participating in HUD's Housing Counseling program, including HUD-approved agencies, and affiliates and branches of HUD-approved intermediaries, HUD-approved multi-state organizations (MSOs), and state housing finance agencies.

Principal limit. FHA proposes to update the definition of "principal limit" to reflect the changes made in RMSA Mortgagee Letters 2014–07 and 2015–02 regarding Non-Borrowing Spouses, and in RMSA Mortgagee Letter 2014–11 regarding the changes made to the fixed interest rate product, as well as new changes discussed below. "Principal limit" would be amended to mean the maximum amount calculated by taking into account the age of the youngest borrower or Eligible Non-Borrowing Spouse, the expected average mortgage interest rate, and the maximum claim amount. Because individual principal limit factors are published, FHA proposes to eliminate the sentence stating that a person who is over the age of 95 will be treated as though he is 95 for the purposes of calculating the principal limit. However, in order to eliminate this sentence in § 206.3 and not impact the formula for the calculation of tenure payments in § 206.25(f), FHA proposes to make clear in § 206.25(f) that in calculating tenure payments for a borrower over the age of 95, the age of 95 will be used. In addition, the current regulatory definition states that the principal limit increases each month at a rate equal to one-twelfth of the mortgage interest rate in effect at that time, plus one-twelfth of one-half percent per annum. FHA proposes to amend this calculation such that the principal limit increases each month at a rate equal to one-twelfth of the mortgage interest rate in effect at that time, plus one-twelfth of the annual mortgage insurance rate, so that a regulatory change is not necessary if the Commissioner changes the annual MIP, which the Commissioner may do through notice under existing authority. As stated in RMSA Mortgagee Letter 2014–11, for adjustable interest rate HECMs, the increase in principal limit may be made available to the borrower each month, except that there may be restrictions on draws during the First-12 Month Disbursement Period; for fixed interest rate HECMs, although the principal limit will continue to increase at the rate established by the Commissioner, the funds will not be available for the borrower to draw against after loan closing.

Principal residence. The definition of "principal residence" was amended in RMSA Mortgagee Letter 2014–07 to account for changes made regarding Non-Borrowing Spouses, and is being further amended in this proposed rule to account for additional changes made in RMSA Mortgagee Letter 2015–02 which introduced the concepts of Eligible and Ineligible Non-Borrowing Spouses. "Principal residence" will be amended to mean the dwelling where the borrower and, if applicable, Non-Borrowing Spouse, maintains his permanent place of abode, and typically spends the majority of the calendar year. Content from § 206.39 that addresses a borrower who is in a health care institution, as clarified in RMSA Mortgagee Letter 2014–07, has been moved to the definition of "principal residence" in § 206.3. The definition of "principal residence" will also cover a Non-Borrowing Spouse who is temporarily in a health care institution provided certain conditions are met. In addition, during a Deferral Period, the property shall continue to be considered the principal residence of any Eligible Non-Borrowing Spouse who is temporarily in a health care institution, provided certain conditions are met.

Property charges. The term "property charges" was defined in RMSA Mortgagee Letter 2014–21, and FHA proposes to codify that definition with only slight revisions, to mean the obligations of the borrower that are, unless otherwise specified, defined as property taxes, hazard insurance premiums, any applicable flood insurance premiums, ground rents, condominium fees, planned unit development fees, homeowners association fees, any other special assessments that may be levied by municipalities or state law, and utilities. While RMSA Mortgagee Letter 2014–21 did not include utilities in the definition of "property charges," FHA proposes to include utilities as a borrower responsibility. FHA has experienced situations where borrowers have not paid utilities, and as a result, large liens for utilities are placed on the property. When FHA pays the insurance claim on the property, FHA reimburses the mortgagee for the utility lien amount. Failure to pay utilities that result in a lien against the property would potentially trigger a due and payable event. By expressly including these utilities as borrower responsibilities, FHA is limiting reimbursement of such expenses.

Qualifying Attributes. The term "Qualifying Attributes" was introduced in RMSA Mortgagee Letter 2014–07. FHA proposes to amend the definition of "Qualifying Attributes" to fit with additional program changes introduced in RMSA Mortgagee Letter 2015–02, to mean the requirements which must be met by a Non-Borrowing Spouse in order to be an Eligible Non-Borrowing Spouse.

Preemption (§ 206.8)

In this rule, FHA proposes to add counseling charges as an example of loan advances to be included in the amount secured by the mortgage, and FHA also proposes to condense some previously listed examples that meet the definition of "property charges", as newly defined in § 206.3.

Subpart B—Eligibility; Endorsement

Disclosure of Available HECM Program Options (§ 206.13)

Section 206.17 allows mortgagees to provide all payment plan options and fixed and adjustable interest rate mortgages to HECM borrowers. Section 206.43(a) requires mortgagees to disclose the costs of obtaining the mortgage, and provide a Good Faith Estimate and other applicable Truth in Lending disclosures to the borrower so the borrower has knowledge of which charges are, and which charges are not, required to obtain the mortgage.

For several years, the fees and charges associated with reverse mortgages have been structured to allow the borrower to benefit in a manner of their choosing by selecting from various HECM products. However, the volume of adjustable interest rate HECMs declined to approximately 30 percent of the total HECMs endorsed for insurance during 2010–2012. On June 28, 2012, the Consumer Financial Protection Bureau (CFPB) published its "Reverse Mortgages Report to Congress",[18] which revealed the practice of many mortgagees failing to inform borrowers of the availability and benefits of adjustable interest rate mortgages.

In response to these concerns, this rule proposes to add § 206.13, which would require that mortgagees inform potential HECM borrowers of all of the HECM products, features and options that FHA insures, in a manner acceptable to the Commissioner, irrespective of the particular HECM products offered by the mortgagee, including (1) fixed interest rate mortgages with the Single Lump Sum payment option; (2) adjustable interest rate mortgages with tenure, term, and line of credit disbursement options, or a combination of these disbursement options; (3) any other disbursement options that FHA will insure; and (4) initial mortgage insurance premium options, and how those affect the availability of other mortgage and disbursement options. This regulatory change is designed to provide a balanced approach in educating and equipping borrowers with the information needed to determine which options will best meet their short- and long-term goals, as well as their financial capacity.

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[18] See *http://files.consumerfinance.gov/a/assets/documents/201206_cfpb_Reverse_Mortgage_Report.pdf.*

Insurance (§ 206.15)

It has come to FHA's attention that the last sentence in § 206.15, which currently states, "The mortgagee shall execute for the Secretary the loan agreement included in the term 'mortgage' as defined in § 206.3," may result in confusion regarding FHA's role in the loan agreement. The loan agreement has been, and continues to be, an agreement between the borrower and the mortgagee. FHA is taking the opportunity provided by this rulemaking to eliminate any potential confusion caused by the language in § 206.15 regarding the execution of the loan agreement by removing the last sentence in this section.

In addition, because the Lender Insurance program is currently unavailable for the HECM program, FHA proposes to remove reference to the Lender Insurance program in § 206.15 at this time.

Eligible Mortgages: General (§ 206.17)

In RMSA Mortgagee Letter 2013–27,[19] FHA introduced the Single Lump Sum payment option as a payment option for fixed and adjustable interest rate HECMs. In RMSA Mortgagee Letter 2014–11, however, FHA limited fixed interest rate HECMs to the Single Lump Sum payment option, and prohibited adjustable interest rate HECMs from using the Single Lump Sum payment option. These changes require FHA to amend § 206.17 to bring it into alignment with the current HECM program requirements. Because the payment options are now dependent upon the type of interest rate, FHA proposes to merge the content of current paragraphs (a) and (b) into one paragraph (b), while reserving paragraph (a). The new paragraph (b) would further specify that fixed interest rate HECMs must use the Single Lump Sum payment option, and that adjustable interest rate HECMs must provide for the term, tenure, line of credit, modified term or modified tenure payment options.

Payment Options (§ 206.19)

Current § 206.19 describes term, tenure and line of credit payment options. FHA proposes to amend this section by also including descriptions of the Single Lump Sum, modified term and modified tenure payment options. As mentioned above, the Single Lump Sum payment option was first introduced in RMSA Mortgagee Letter 2013–27, and then subsequently discussed and limited to fixed interest rate HECMs in RMSA Mortgagee Letter 2014–11. FHA proposes to codify the description and requirements of the Single Lump Sum payment option in § 206.19. Sections 206.17 and 206.25 currently provide for modified term or modified tenure payment options, but § 206.19 did not previously describe the modified term or modified tenure payment options by themselves; they were listed as a subparagraph of paragraph (d), which discusses principal limit set asides. When a portion of the principal limit is set aside to be drawn down as a line of credit, such "set aside" is more appropriately characterized as a payment option (modified term or modified tenure payment option) than as a principal limit set aside, so FHA proposes to update § 206.19 accordingly in this rulemaking.

FHA also proposes to amend current paragraph (d) (proposed paragraph (f)) to reflect changes made to FHA's principal limit set aside policies. The LESA was first introduced in RMSA Mortgagee Letter 2013–27, but, after considering public comments, the LESA was substantially revised through RMSA Mortgagee Letter 2014–21. The LESA is discussed in more detail later in this preamble, as FHA proposes to codify its requirements in § 206.205, but FHA proposes to also amend § 206.19 to reflect that when required by FHA's regulations in § 206.205, or selected by the borrower in accordance with § 206.205, the mortgagee shall set aside a portion of the principal limit in a LESA to be used to pay certain property taxes, including special assessments levied by municipalities or state law, and flood and hazard insurance premiums. In addition, when the borrower has an adjustable interest rate HECM and is not required to have a LESA, the borrower may elect to have the mortgagee pay property charges.

In this section, FHA also proposes to codify requirements announced in RMSA Mortgagee Letters 2014–11 and 2014–21 regarding the limitation on disbursements during the First 12-Month Disbursement Period. Under these RMSA mortgagee letters, disbursements may not be made during the First 12-Month Disbursement Period in excess of the Initial Disbursement Limit or the Borrower's Advance, as applicable. In this rule, however, FHA is requesting public comment regarding exceptions to this limitation. While FHA's intent of limiting draws during the first 12 months of the HECM was to ensure that funds remained available to borrowers over time and were available when borrowers needed them, FHA recognizes that there may be some limited circumstances, such as medical emergencies or death of a loved one, which may necessitate allowing draws beyond the established limits.

FHA specifically requests public comment on the following questions:

(1) What types of medical emergencies or other circumstances may result in exceptions to the draw limits during the First 12-Month Disbursement Period, such as hospice care, illness requiring extensive therapy (*e.g.*, chemotherapy, dialysis, physical therapy), terminal medical conditions, serious illness, and catastrophic accidents resulting in incapacitation of the borrower or death of a spouse?

(2) What kind of documentation should be required to support the anticipated or actual financial impact of such exigent circumstances?

Finally, in new § 206.19(h), which incorporates the contents of current paragraph (f), FHA proposes to clarify the policy announced in RMSA Mortgagee Letter 2014–21 regarding partial repayment for term, tenure, line of credit, modified term and modified tenure payment options in paragraph (h)(2). RMSA Mortgagee Letter 2014–21 states that if a borrower makes a partial repayment of the outstanding loan balance during the First 12-Month Disbursement Period, the mortgagee must increase the available principal limit by the amount applied toward the outstanding loan balance, up to an amount not to exceed the Initial Disbursement Limit or the principal limit, as applicable. FHA proposes to clarify that any partial repayment shall be applied in accordance with the terms contained in the Note. Similarly, in § 206.19(h)(3), FHA proposes to clarify that for the Single Lump Sum payment option, if the borrower makes a partial repayment of the outstanding loan balance any time after loan closing and before the contract of insurance is terminated, the mortgagee shall apply the funds in accordance with the terms contained in the Note, but that any resulting increase in the principal limit shall not be available for the borrower to draw against.

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[19] Mortgagee Letter 2013–27 was later superseded by Mortgagee Letter 2014–21, but the applicable policy change which this rule proposes to codify was announced in Mortgagee Letter 2014–11, prior to the publication of Mortgagee Letter 2014–21.

Interest Rate (§ 206.21)

Section 206.21 provides requirements related to fixed and adjustable interest rate HECMs, including disclosure requirements. As discussed earlier in this preamble in the discussion of the definition of "expected average mortgage interest rate" in § 206.3, FHA proposes to amend paragraph § 206.21(b), which applies to adjustable interest rate HECMs, to make conforming changes consistent with the proposed changes to that definition, which would allow for the interest rate to be locked-in prior to closing. If the interest rate was locked-in prior to closing, then amended § 206.21(b) would provide that the margin used to determine interest rate adjustments is the difference between the expected average mortgage interest rate and the value of the appropriate index at the time of rate lock-in.

Current regulations at § 206.21(b) provide that for annual adjustable interest rate HECMs, periodic interest rate increases and decreases are capped at two percentage points and there is a five or six percentage point cap over the life of the loan, depending on whether the loan is a one- or three-year adjustable rate mortgage (five percentage point cap) or a five-, seven-, or ten-year adjustable rate mortgage (six percentage point cap). These caps, although modeled after § 203.49, vary from the levels set in § 203.49. FHA proposes to remove reference to three-, five-, seven-, and ten-year adjustable interest rate HECMs because FHA only offers to insure one-year annual adjustable interest rate HECMs and monthly adjustable interest rate HECMs.

FHA also proposes to amend the cap level on one-year annual adjustable rate HECMs to more closely align with those of forward mortgages and to provide enhanced interest rate protection for borrowers. As such, FHA proposes that for the annual adjustable interest rate mortgages, periodic interest rate increases and decreases are capped at one percentage point and there is a five percentage point cap over the life of the loan.

Section 206.21(b)(2) permits mortgagees who offer an annual adjustable interest rate mortgage the opportunity to offer a monthly adjustable interest rate mortgage using the Constant Maturity Treasury (CMT) or London Interbank Offer Rate (LIBOR) interest rate index without defining the rate of change that can occur during a 12-month cycle or over the life to the loan. A similar limit on lifetime interest rate adjustments for monthly adjustable interest rate HECMs would reduce risk to the borrower and the MMIF by reducing potential principal balance growth, and providing access to additional funds for the borrower. Therefore, this proposal revises § 206.21(b)(2) to provide that adjustments to the mortgage interest rate over the entire term of the monthly adjustable interest rate HECM may not result in a change in either direction from the initial contract interest rate of more than five percentage points.

In addition, in § 206.21(b), FHA references regulations in § 203.49. Specifically in § 206.21(b)(2), FHA references an "index as provided in § 203.49(a), (b), and (f)(1)." To provide greater clarity, FHA proposes to restate these requirements in FHA's part 206 regulations, as applicable to the HECM program, instead of cross-referencing to other parts of FHA's regulations.

Finally, in § 206.21(c), which pertains to pre-loan disclosures as related to interest rates, FHA proposes to make very minor changes to further clarify FHA's regulation and to update its reference to Truth in Lending disclosures, which are now codified at 12 CFR part 1026.

Shared Appreciation (§ 206.23)

FHA seeks public comment on the utility of FHA's shared appreciation regulation. Specifically, FHA requests comment on the following questions: Do mortgagees have an interest in offering this program or if there is little or no interest, should HUD remove it from the regulations?

Calculation of Disbursements (§ 206.25)

Sections 206.25, titled "Calculation of payments", and 206.29, titled "Initial disbursement of mortgage proceeds" of FHA's current regulations contain similar content and FHA would like to take the opportunity provided by this rulemaking to streamline these sections by moving content of § 206.29 into § 206.25(d) as applicable, and removing § 206.29. Specifically, FHA proposes to add a new paragraph (d) which provides that mortgage proceeds may not be disbursed until closing or after the expiration of the 3-day rescission period under 12 CFR part 1026, if applicable. Items that were previously listed as exceptions to the prohibition on disbursements are now covered as Mandatory Obligations. The remaining paragraphs in § 206.25 will be renumbered.

FHA also proposes to make other changes to § 206.25, including codifying program changes implemented through RMSA mortgagee letters and making related programmatic changes, as discussed below in this preamble.

FHA implemented changes to the maximum initial disbursement available to borrowers in RMSA Mortgagee Letter 2014–21. The Initial Disbursement Limit is applicable to all adjustable interest rate HECMs and is the maximum disbursement allowed to a borrower at loan closing and during the First 12-Month Disbursement Period. In RMSA Mortgagee Letter 2014–21, the Initial Disbursement Limit was set at the greater of 60 percent of the principal limit; or the sum of Mandatory Obligations and 10 percent of the principal limit. In this rule, FHA proposes to revise this formula to allow the Commissioner flexibility in setting these limits, such that the Initial Disbursement Limit shall not exceed the lesser of: (1) The greater of an amount established by the Commissioner through notice which shall not be less than 50 percent of the principal limit; or the sum of Mandatory Obligations and a percentage of the principal limit established by the Commissioner through notice which shall not be less than 10 percent; or (2) the principal limit less the sum of the funds in the LESA for payment beyond the First 12-Month Disbursement Period and the Servicing Fee Set Aside. While FHA does not intend to change the current amounts at this time, which are set at 60 percent and 10 percent, respectively, this change is necessary for FHA to have the flexibility to raise or lower these amounts to meet the operational goals of the MMIF and respond to future market changes or other factors as necessary.

In addition, while it is FHA's current policy that the amount drawn at any point in time and over time may not exceed the available principal limit, FHA's new language makes clear that the Initial Disbursement Limit may never exceed the amount of the principal limit remaining after the funds in the LESA for payment beyond the First 12-Month Disbursement Period and the Servicing Fee Set Aside are subtracted; the funds in these set asides are not available to the borrower. If the greater of the percentage of the principal limit established by the Commissioner or Mandatory Obligations plus a percentage of the principal limit established by the Commissioner exceeds the amount of the principal limit available to the borrower, the borrower may only receive the amount of the principal limit available.

FHA also proposes to clarify that if the borrower draws or will draw an additional percentage beyond Mandatory Obligations in accordance with the Initial Disbursement Limit calculation in § 206.25(a)(1), the borrower must notify the mortgagee at closing of the exact amount of the additional percentage of the principal limit that the borrower will draw or that the borrower wants to have available for future draws during the First 12-Month Disbursement Period, and that such election cannot be increased or decreased after closing. The amount drawn impacts the initial MIP amount, so it is particularly important for borrowers and mortgagees to know if the amount the borrower elects to withdraw during the First 12-Month Disbursement Period will exceed the lesser MIP threshold.

The Borrower's Advance is applicable to all fixed interest rate HECMs and is calculated using the same formula as the Initial Disbursement Limit. In this rule, FHA proposes to make the same changes to the calculation of the Borrower's Advance, such that the Borrower's Advance shall not exceed the lesser of: (1) The greater of an amount established by the Commissioner through notice which shall not be less than 50 percent of the principal limit; or the sum of Mandatory Obligations and a percentage of the principal limit established by the Commissioner through notice which shall not be less than 10 percent; or (2) the principal limit less the sum of the funds in the LESA for payment beyond the First 12-Month Disbursement Period and the Servicing Fee Set Aside. While FHA does not intend to change the current amounts at this time, which are set at 60 percent and 10 percent, respectively, this change is necessary for FHA to have the flexibility to raise or lower these amounts to meet the operational goals of the MMIF and to respond to future market changes or other factors as necessary.

In addition, while it is FHA's current policy that the amount drawn at any point in time and over time may not exceed the available principal limit, FHA's new language makes clear that the Borrower's Advance may never exceed the amount of the principal limit remaining after the funds in the LESA for payment beyond the First 12-Month Disbursement Period and the Servicing Fee Set Aside are subtracted; the funds in these set asides are not available to the borrower. If the greater of the percentage of the principal limit established by the Commissioner or Mandatory Obligations plus a percentage of the principal limit established by the Commissioner exceeds the amount of the principal limit available to the borrower, the borrower may only receive the amount of the principal limit available.

FHA also proposes to clarify that if the borrower draws or will draw an additional percentage beyond Mandatory Obligations in accordance with the Borrower's Advance calculation in § 206.25(a)(2), the borrower must notify the mortgagee at closing of the exact amount of the additional percentage of the principal limit that the borrower will draw at closing, and that such election cannot be increased or decreased after closing. The amount drawn impacts the initial MIP amount, so it is particularly important for borrowers and mortgagees to know if the amount the borrower elects to withdraw at closing will exceed the lesser MIP threshold.

Mandatory Obligations for traditional, refinance and purchase transactions were listed in RMSA Mortgagee Letter 2014–21. In this rule, FHA proposes to codify those lists in § 206.25(b) and § 206.25(c), but also proposes to add flood certifications to the lists, which was inadvertently excluded from the lists in RMSA Mortgagee Letter 2014–21.

FHA proposes to make conforming changes to the term, tenure and line of credit paragraphs, and proposes to codify changes made to these payment options in RMSA Mortgagee Letters 2014–07 and 2014–21, including the requirement that the sum of disbursements made during the First 12-Month Disbursement Period may not exceed the Initial Disbursement Limit or Borrower's Advance, as applicable. Consistent with changes proposed to § 206.19(h) regarding disbursement limits, FHA also proposes to amend § 206.25 to provide the Commissioner with flexibility to allow disbursements during the First 12-Month Disbursement Period to exceed the Initial Disbursement Limit. Further, FHA clarifies that at the end of the First 12-Month Disbursement Period, the borrower may request a payment plan change or merely a recalculation of the current payment plan.

In § 206.25, FHA also proposes to add a new paragraph (h) to describe the Single Lump Sum payment option and codify the requirements for this payment option, as set out in RMSA Mortgagee Letter 2014–21. Although the name has slightly changed from the "Single Lump Sum Disbursement" payment option to the "Single Lump Sum" payment option, the requirements set out in the RMSA mortgagee letter are unchanged.

Finally, FHA proposes to slightly amend current paragraph (e) titled "Payment of MIP and interest," which will be renamed paragraph (i), to provide greater clarity around the timing of when the MIP is due.

Change in Payment Option (§ 206.26)

Section 206.26 allows the borrower to request a change in payment option, provided certain conditions are met. Changes implemented by RMSA Mortgagee Letters 2014–11 and 2014–21 impacted the conditions under which a payment plan change is permitted, and FHA proposes to codify those changes in § 206.26.

RMSA Mortgagee Letter 2014–11 instituted limits on the fixed interest rate product, such that fixed interest rate HECMs are only eligible for the Single Lump Sum payment option. Multiple draws are not permitted under this option, and therefore borrowers with fixed interest rate HECMs may not request a change in payment option. Adjustable interest rate HECMs, on the other hand, are eligible for payment option changes. However, during the First 12-Month Disbursement Period, payment option changes which would cause disbursements to exceed the Initial Disbursement Limit are not permissible. At the end of the First 12-Month Disbursement Period, borrowers may request a recalculation of their current payment option, or may change to any other permissible payment option.

Together, RMSA Mortgagee Letters 2014–11 and 2014–21 also provide that for adjustable interest rate HECMs, when repairs are completed without using all of the Repair Set Aside, the mortgagee must transfer the remaining funds available in the Repair Set Aside to a line of credit. In this rule, FHA proposes to include the option to transfer the remaining funds to a modified term or modified tenure payment option in order to provide borrowers with more options when they have an existing term or tenure payment option and there are funds left in the Repair Set Aside that the mortgagee needs to transfer to them. For fixed interest rate HECMs, on the other hand, unused funds in the Repair Set Aside may not be provided to the borrower, except that the borrower may be able to be reimbursed for repair materials purchased by the borrower (but not for labor provided by the borrower).

Mortgage Provisions (§ 206.27)

RMSA Mortgagee Letter 2014–07, as amended by RMSA Mortgagee Letter

2015–02, requires the mortgage to include provisions deferring the due and payable status that occurs as a result of the death of the last surviving borrower, for an Eligible Non-Borrowing Spouse, and prohibiting the continuation of payments under the reverse mortgage during a Deferral Period. FHA proposes to codify these requirements in § 206.27(b).

Section 206.27(b)(2) currently requires the borrower to maintain hazard insurance on the property in an amount acceptable to the Secretary and the mortgagee. FHA proposes to add more specificity to this provision to remove the potential risk of litigation related to hazard insurance coverage. Specifically, FHA proposes to require the borrower to insure all improvements on the property that serves as collateral for the HECM whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including but not limited to fire and flood, for which the mortgagee requires insurance. FHA also proposes to provide that such insurance shall be maintained in the amount, and for the period of time, that are necessary to protect the mortgagee's investment. Whether or not the mortgagee imposes a flood insurance requirement, FHA proposes to require the borrower to, at a minimum, insure all improvements on the property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Commissioner. If the mortgagee imposes insurance requirements, all insurance would be required to be carried with companies acceptable to the mortgagee, and the insurance policies and any renewals would be required to be held by the mortgagee and include loss payable clauses in favor of and in a form acceptable to the mortgagee.

Section 206.27(b)(6) currently requires the borrower to pay taxes, hazard insurance premiums, ground rents and assessments in a timely manner. As a result of changes made to property charge payment requirements in RMSA Mortgagee Letter 2014–21, FHA proposes to amend this paragraph to require that the borrower provide for the payment of property charges in accordance with § 206.205. This will cover circumstances in which property charges are paid from a LESA, where a borrower elects to have the mortgagee pay the property charges, or where a borrower pays property charges. A discussion of the property charge payment requirements can be found later in the preamble.

Section 206.27(c) lists the conditions which cause the HECM to become due and payable, which include when the borrower dies and the property is not the principal residence of at least one surviving borrower. As mentioned above, RMSA Mortgagee Letters 2014–07 and 2015–02 provide for a deferral of the due and payable status upon the death of the last surviving borrower where there is an Eligible Non-Borrowing Spouse. Therefore, it is necessary to amend § 206.27(c) to provide an exception that defers the due and payable status if the requirements of the Deferral Period are met.

Another condition which may result in the HECM becoming due and payable is when the borrower does not pay property charges as required by the mortgage and § 206.205. This specific situation has always been captured under the current provision in § 206.27(c)(2)(iii), which provides that the outstanding loan balance is due and payable upon HUD-approval when an obligation of the borrower under the mortgage is not performed. Due to an increase in property charge defaults, however, FHA proposes to specifically and clearly articulate that the borrower's non-payment of property charges in accordance with § 206.205 is a condition which can cause the HECM to become due and payable with the approval of the Commissioner.

Finally, § 206.27(d) discusses second mortgages. This section requires that unless otherwise provided, a second mortgage must be given to HUD before a Mortgage Insurance Certificate is issued. Where the Commissioner elects to not require a second mortgage prior to the issuance of a Mortgage Insurance Certificate, it is important that FHA is still able to protect its security interest; therefore, FHA proposes to allow the Commissioner to require a second mortgage at a later date when not required prior to issuance of the Mortgage Insurance Certificate. RMSA Mortgagee Letter 2014–11 changed the structure of the fixed interest rate product to allow only a single disbursement and eliminated the need for fixed interest rate HECMs to have a second mortgage. FHA does not need to codify this policy because it is covered under the language "unless otherwise provided" in the current regulation.

Allowable Charges and Fees (§ 206.31)

Current section 206.31(a)(1) permits loan origination fees and allows the Secretary to establish fee limits. However, in 2008, HERA established limits on the loan origination fee that may be charged for HECMs, such that the loan origination fee limit is the greater of $2,500 or two percent of the maximum claim amount of the mortgage, up to a maximum claim amount of $200,000, plus one percent of any portion of the maximum claim amount that is greater than $200,000; and the total amount of the loan origination fee may not exceed $6,000. FHA implemented these limits through HERA Mortgagee Letter 2008–34 and in this rule, FHA proposes to codify these limits in § 206.31(a)(1). FHA also proposes to clarify that such loan origination fee includes expenses incurred in originating, processing and closing the HECM.

Current section 206.31(a)(1) also prohibits borrowers from paying any origination fees in addition to those that are permitted to be paid to the mortgagee (which includes amounts paid by a mortgagee to a mortgage broker or sponsored third-party originator). This paragraph permits a mortgage broker's fee to be included as part of the origination fee if the mortgage broker was engaged independently by the borrower and there is no financial interest between the mortgage broker and the mortgagee. This provision has caused significant confusion, and to address that confusion, FHA proposes to amend § 206.31(a)(1) to clarify that the prohibition is on additional fees paid by a borrower beyond the loan origination fee limit, and does not prohibit the provision of compensation to a sponsored third-party originator by a mortgagee.

No Outstanding Unpaid Obligations (§ 206.32)

FHA proposes to amend this section to make conforming changes that correspond with the introduction of Mandatory Obligations in RMSA Mortgagee Letter 2014–21. Pursuant to RMSA Mortgagee Letter 2014–21, initial Repair Set Asides to pay for repairs where the need for repairs was discovered prior to or at closing are considered Mandatory Obligations and are included in the initial disbursement. Therefore, they should not be included as an exception in this section.

Age of Borrower (§ 206.33)

Section 206.33 requires the youngest borrower to be at least 62 year of age at the time the mortgagee submits the application for insurance. FHA finds that it is unnecessary for the youngest borrower to be 62 at the loan application stage, and instead proposes to require that the youngest borrower be at least 62 years of age at the time of loan closing which will insure compliance with the statutory requirement that the borrower be 62 at endorsement.

Limitation on Number of Mortgages (§ 206.34)

Permitting multiple HECMs at one time is contrary to the intent of the program to insure the property which serves as the borrower's primary residence. FHA is taking the opportunity afforded by this rule to clarify policy in this regard. The proposed rule adds a new § 206.34, which states that once a borrower has obtained an insured HECM, the borrower may not close on another HECM unless the existing insured mortgage is satisfied at, or prior to, closing, except for cases of divorce where an ex-spouse, who had previously jointly obtained a HECM with their ex-spouse, has relinquished title as evidenced by a recorded deed.

FHA believes that the final divorce decree and the recorded quit claim, or its equivalent, are considered the only legal acknowledgement of transfer, but FHA is seeking feedback on the following question: What additional forms of documentation should be considered to confirm that an ex-spouse has been removed from the existing loan and has no financial obligation?

In addition, FHA intends the prohibition on closing another HECM unless the existing insured mortgage is satisfied to mean, in the case of a deed in lieu on an existing HECM where a borrower seeks to obtain a new HECM, the deed in lieu must be fully executed and recorded before a borrower is eligible for a new HECM. New § 206.34 also proposes to codify material in HERA Mortgagee Letter 2009–11 to state that current HECM borrowers that plan to sell their existing residence and use the HECM for Purchase program to obtain a new principal residence must pay off the existing FHA-insured mortgage before the HECM for Purchase mortgage can be insured. The material on rental properties in HERA Mortgagee Letter 2009–11 does not rise to the level of regulation, and as such, will not be codified.

Title of Property Which is Security for HECM (§ 206.35)

Currently, § 206.35 requires a HECM borrower or borrowers to hold full title to the property which is the security for the mortgage, as "borrower" is newly defined in § 206.3. It had come to FHA's attention that Non-Borrowing Spouses or other non-borrowing owners were, at times, quit claiming their interest in the property prior to closing, and then being put back onto the title of the property. FHA believes that the new Deferral Period policy for Eligible Non-Borrowing Spouses has reduced the need for this practice, but nonetheless finds it important to amend the full-title requirement to provide that Non-Borrowing Spouses and non-borrowing owners may stay on title to the property serving as the security interest for the HECM, making them mortgagors. This proposed change would eliminate the burden on Non-Borrowing Spouses or other heirs who remain on title of having to establish legal ownership of the property upon the death of the borrowing spouse.

Seasoning Requirements for Existing Non-HECM Liens (§ 206.36)

RMSA Mortgagee Letter 2014–21, as amended by RMSA Mortgagee Letter 2015–02, created seasoning requirements for existing non-HECM liens. The RMSA mortgagee letters provide that mortgagees can only permit the payoff of existing non-HECM liens using HECM proceeds if the liens have been in place for longer than 12 months or have resulted in less than $500 cash to the borrower, and that mortgagees must review and provide the necessary documentation illustrating that the seasoning requirements have been met. FHA does not intend to change its current policy, whereby mortgagees can only permit the payoff of existing non-HECM liens using HECM proceeds if the liens have been in place for longer than 12 months or have resulted in cash to the borrower in an amount of $500 or less. However, FHA recognizes the importance of being able to adjust this seasoning requirement in the future if necessitated by the market or borrower characteristics. Therefore, FHA proposes to allow the Commissioner to impose seasoning requirements through notice, but provides that any such requirements imposed by future notice may not be more stringent than the policy currently in place. Further, although the specific documentation processes were outlined in the RMSA mortgagee letters, those processes are more suitable for guidance and will not be codified in § 206.36.

Credit Standing (§ 206.37)

In the past, there have been an increasing number of tax and hazard insurance defaults by borrowers. Section 206.37 currently provides that each borrower must have a general credit standing that is satisfactory, but provides no further requirements. Therefore, in RMSA Mortgagee Letter 2013–27, FHA established a requirement for a Financial Assessment of a potential borrower's financial capacity and willingness to comply with mortgage provisions. As mentioned earlier in this preamble, after considering public comments, FHA published revised Financial Assessment and Property Charge Funding Requirements in RMSA Mortgagee Letter 2014–21, which superseded RMSA Mortgagee Letter 2013–27.

In this rule, FHA proposes to codify the Financial Assessment requirements announced in RMSA Mortgagee Letter 2014–21 in § 206.37.[20] Mortgagees will be required to perform a Financial Assessment of the prospective borrower prior to loan approval, which will consider the prospective borrower's credit history, cash flow and residual income, extenuating circumstances, and compensating factors. Financial Assessments must be conducted in a uniform manner that does not discriminate because of race, color, religion, sex, national origin, familial status, disability, marital status, actual or perceived sexual orientation, gender identity, source of income of the prospective borrower, or location of the property, and which complies with all applicable laws and regulations.

Some of the Financial Assessment material in RMSA Mortgagee Letter 2014–21 is better suited as guidance and will therefore not be codified in § 206.37. For example, the provision permitting mortgagees to obtain a credit report prior to the completion of HECM counseling does not rise to the level of regulation and should be treated as guidance. In addition, the examples of extenuating circumstances and compensating factors are more suitable for guidance.

Principal Residence (§ 206.39)

As mentioned earlier, some of the content from § 206.39, as clarified by RMSA Mortgagee Letter 2014–07, is being moved to the actual definition of "principal residence" in § 206.3. In § 206.39(a), FHA proposes to codify changes implemented in RMSA Mortgagee Letter 2015–02 to state that the property must be the principal residence of each Eligible Non-Borrowing Spouse at closing and must remain the principal residence to maintain eligibility for the Deferral Period.

In new § 206.39(b), FHA proposes to codify program changes made in HERA Mortgagee Letter 2009–11 which require borrowers in the HECM for Purchase program to occupy the property within 60 days from the date of closing, and also to update the HECM for Purchase requirements to impose this 60-day requirement on Eligible Non-Borrowing Spouses, bringing this provision into alignment with the Non-Borrowing Spouse policy announced in RMSA Mortgagee Letters 2014–07 and 2015–02.

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[20] Property Charge Funding Requirements can be found in § 206.205.

Disclosure, Verification and Certifications (§ 206.40)

Section 206.40 currently provides for the disclosure and verification of Social Security and Employer Identification Numbers for the borrower. As a result of changes made to the HECM program regarding Non-Borrowing Spouses in RMSA Mortgagee Letter 2014–07, as amended by RMSA Mortgagee Letter 2015–02, FHA proposes to amend § 206.40 to codify the requirements that an Eligible Non-Borrowing Spouse must comply with the same disclosure and verification of Social Security and Employer Identification Numbers required of the borrower, and that all borrowers and Non-Borrowing Spouses must provide all necessary certifications to HUD and the mortgagee.

In addition, FHA proposes to add a new paragraph (c) to address circumstances in which FHA has been unable to find and communicate with borrowers concerning their HECMs. In this new paragraph, FHA proposes to allow the Commissioner to require a borrower to designate an agent or other party to act on his behalf when FHA is unable to make contact or communicate with the borrower. Even when not required, FHA would allow the borrower to voluntarily designate an agent or other person to act on his behalf.

Counseling (§ 206.41)

FHA currently requires prospective borrowers and Non-Borrowing Spouses to receive counseling. FHA is taking the opportunity provided by this rulemaking to amend § 206.41 to include the specific requirements that apply when there are Eligible or Ineligible Non-Borrowing Spouses, consistent with the program changes implemented by RMSA Mortgagee Letters 2014–07 and 2015–02. In addition, FHA proposes to provide the Commissioner with the flexibility to require HECM counselors, through notice, to discuss any other requirements with prospective borrowers and Non-Borrowing Spouses. Finally, consistent with current requirements, and as articulated in RMSA Mortgagee Letter 2014–07, FHA proposes to amend § 206.41(c) to codify the requirements that HECM counselors provide each borrower with a certificate saying that the borrower and Non-Borrowing Spouse, if applicable, have received counseling. Instead of requiring each borrower to provide the mortgagee with a copy of the certificate, this rule proposes to instead require the HECM counselor to upload the certificate into the appropriate electronic database.

FHA also proposes to require prospective borrowers of HECM for Purchase transactions to complete the required HECM counseling prior to signing a sales contract and/or making an earnest money deposit, unless otherwise provided by the Commissioner, instead of allowing them to complete the counseling before or after the initial application is submitted to the mortgagee. FHA believes it is beneficial for the borrower to understand the requirements of the HECM for Purchase program prior to committing to purchase a home using a HECM.

Monetary Investment for HECM for Purchase Program (§ 206.44)

HERA Mortgagee Letter 2009–11 requires that HECM for Purchase borrowers provide a monetary investment that will be applied to satisfy the difference between the principal limit and the sale price for the property, plus any HECM loan-related fees that are not financed into the loan, minus the amount of the earnest deposit. The HERA mortgagee letter also provides that HECM borrowers may choose to provide a larger investment amount in order to retain a portion of the available HECM proceeds for future draws, and specifies permissible funding sources. FHA proposes to codify these requirements in a new § 206.44, except as discussed below.

In the "Monetary Investment" section, the provision that states that HECM borrowers may choose to provide a larger investment amount in order to retain a portion of the HECM proceeds does not rise to the level of regulation and therefore will not be codified.

In the "Funding Sources" section, material regarding the disallowed funding sources, which was, at the time of issuance of the HERA mortgagee letter, taken directly from a HUD Handbook, was guidance and is no longer FHA's policy. In addition, the prohibition on seller contributions, which will more accurately be referred to as interested party contributions[21] throughout this rule, will remain in effect for FHA Case Numbers assigned prior to the effective date of the final rule, but will be amended in this rule for FHA Case Numbers assigned on or after the effective date of the final rule. The current prohibition on interested party contributions is unique and redirects expenses customarily paid by the seller or other interested parties to the buyer in HECM for Purchase transactions. In this rule, FHA proposes to permit limited interested party contributions, and to allow the Commissioner flexibility to define the types and parameters of other allowable interested party contributions in the future through **Federal Register** notice for public comment. FHA proposes to specifically allow the seller to pay fees required to be paid by the seller under state or local law and to purchase the Home Warranty policy. These changes would remove barriers to HECM for Purchase transactions which exist in state or local jurisdictions which require certain seller-paid costs.

Eligible Properties (§ 206.45)

Currently, § 206.45(a) provides that a mortgage must be on real estate held in fee simple, or on a leasehold under a lease for not less than 99 years which is renewable, or under a lease having a remaining period of not less than 50 years beyond the date of the 100th birthday of the youngest mortgagor. This section was written to implement subsection 255(b)(4) of the NHA. However, Public Law 111–22, signed into law on May 20, 2009, amended subsection 255(b)(4) of the NHA to replace the language regarding a lease having a remaining period of not less than 50 years beyond the date of the 100th birthday of the youngest mortgagor with "a lease that has a term that ends no earlier than the minimum number of years, as specified by the Secretary, beyond the actuarial life expectancy of the mortgagor or comortgagor, whichever is the later date." FHA is taking the opportunity provided by this rulemaking to update its regulation at § 206.45(a) to require that, to be eligible for insurance, a mortgage must be on real estate held in fee simple; or on a leasehold that is under a lease with a duration lasting until the later of: (1) 99 years, if such lease is renewable; or (2) the actuarial life expectancy of the youngest mortgagor plus a number of years specified by the Commissioner,[22] which shall not be more than 99 years.

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[21] Interested party contributions encompasses the use of loan discount points, interest rate buy-downs, closing cost down payment assistance, builder incentives, and gifts of personal property given by the seller or any other party involved in the transaction, which were set out separately in HERA Mortgagee Letter 2009–11.

[22] While section 255(b)(4) of the NHA specifically provides that the "Secretary" shall specify the minimum number of years for a lease term, FHA proposes to use the term "Commissioner" to more accurately reflect HUD's delegations of authority from the Secretary to the Commissioner.

In addition, paragraphs (c) and (e) reference requirements in §§ 203.16a, 203.40, 203.41, and 234.66. To provide greater clarity, FHA proposes to restate requirements, as applicable to the HECM program, in FHA's part 206 regulations instead of cross-referencing to other parts of FHA's regulations. Therefore, FHA proposes to amend paragraph (c) by restating the flood insurance requirements, and to move and restate the property location requirements from current paragraph (c) to a new paragraph (f). FHA also proposes to restate the permissible restrictions on conveyance in paragraph (e).

In § 206.45(g), FHA proposes to codify and amend requirements announced in HERA Mortgagee Letter 2009–11. HERA Mortgagee Letter 2009–11 defined a "HECM for Purchase" as a real estate purchase where title to the property is transferred to the HECM borrower and, at the time of closing, the HECM first and second liens will be the only liens against the property. HERA Mortgagee Letter 2009–11 also provided that only properties where construction is completed are eligible for insurance under the HECM for Purchase program. While it has always been FHA's intent that these properties be habitable, in this rule, FHA proposes to include habitability, as evidenced by a Certificate of Occupancy or similar document, as a criterion for insurance eligibility. FHA will not codify the provision which states that loan proceeds may be used to satisfy outstanding payment obligations associated with a land contract, contract for deed, or similar purchase arrangements that will ensure the property meets FHA's title requirements, as this is interpretive guidance.

Property Standards; Repair Work (§ 206.47)

RMSA Mortgagee Letter 2014–11 provided that no unused Repair Set Aside funds for fixed interest rate HECMs could be made available to the borrower under any circumstance. After issuing RMSA Mortgagee Letter 2014–11, FHA published a notice in the **Federal Register** on July 10, 2014, at 79 FR 39408, soliciting comment on the RMSA mortgagee letter. FHA received two public comments, and one of those comments requested clarification on the aforementioned prohibition. In response to this comment, FHA clarified its policy in RMSA Mortgagee Letter 2014–21 to provide that borrowers with either fixed or adjustable interest rate HECMs could not be reimbursed for labor, but could be reimbursed for the cost of materials, under certain conditions, when repairs are being completed after loan closing. FHA proposes to codify its policy which allows borrowers to be reimbursed from the Repair Set Aside for the actual cost of repair materials by specifying that paragraph (c) applies to the reimbursement of contractors and creating a new paragraph (d) for the reimbursement of borrowers.

In paragraphs (c) and (d), FHA proposes amendments related to the inspection requirements. Currently, paragraph (c), which is the only paragraph in this section that discusses inspections, requires the post-repair inspection(s) of the property to be completed by an inspector approved by HUD. However, FHA published a proposed rule on February 6, 2013, at 78 FR 8448, which, in part, proposed to remove its Inspector Roster regulations. Therefore, to allow for consistency between inspection requirements for the HECM program and any future changes to FHA's forward mortgage program related to inspectors, FHA proposes to broaden the language used in § 206.47 to provide that the inspector or other qualified individual must be acceptable to the Commissioner.

FHA also proposes to codify HECM for Purchase program requirements announced in HERA Mortgagee Letter 2009–11 in a new paragraph (e) to state that in HECM for Purchase transactions, where major property deficiencies threaten the health and safety of the homeowner or jeopardize the soundness and security of the property, all repairs must be completed by the seller prior to closing. Appraisers are required to complete the appraisal report as "Subject To" the completion of the repairs. Additional content in the "Repair and Property Set Asides Section" of HERA Mortgagee Letter 2009–11 listing examples of major property deficiencies will not be codified, as it is guidance material. In addition, FHA will not codify the material regarding HECM borrowers continuing to have the option to elect to have the mortgagee set aside funds for the payment of property charges because borrowers are now subject to the Financial Assessment Property Charge Funding Requirements implemented by RMSA Mortgagee Letter 2014–21, which may or may not allow them to elect to have the mortgagee set aside funds for the payment of property charges.

Eligibility of Mortgages Involving a Dwelling Unit in a Condominium (§ 206.51)

The current regulation at § 206.51 requires that where the mortgage involves a dwelling unit in a condominium, the project in which the condominium is located must be committed to a plan of condominium ownership by deed or other instrument acceptable to the Secretary, but the regulation also provides a limited exception for some loans on single units in unapproved condominium projects. This "spot approval" exception was removed from the FHA condominium policy under HERA, and therefore, this rule proposes to eliminate this exception from § 206.51.

Eligible Sale of Property—HECM for Purchase (§ 206.52)

HERA Mortgagee Letter 2009–11 requires that mortgagees providing HECM financing for HECM for Purchase transactions comply with the FHA regulation at 24 CFR 203.37a. To provide greater clarity, FHA proposes to restate these requirements in FHA's part 206 regulations, as applicable to the HECM for Purchase program, instead of cross-referencing to other parts of FHA's regulations. These requirements encompass requirements set out in HERA Mortgagee Letter 2009–11 regarding a mortgagee's responsibility to prohibit property flipping practices for properties which are the subject of HECM for Purchase transactions. The content regarding the importance of prospective borrowers being aware of coercive actions against them is guidance and will not be codified.

Refinancings (§ 206.53)

This proposed rule updates FHA's regulation at § 206.105 which governs the MIP paid in connection with HECM loans. These proposed changes reflect statutory amendments to the NHA that provide FHA with additional flexibility in establishing the initial MIP for FHA-insured mortgages up to 3 percent of the amount of the original insured principal obligation of the mortgage and are discussed later in the preamble. The proposed rule makes a conforming change to § 206.53(c), which describes the initial MIP limit for the refinancing of HECM mortgage loans.

In addition, FHA proposes to move the content of current § 206.53(c) into a new subparagraph (c)(1), and also proposes to revise the wording of new § 206.53(c)(1), for clarity. These proposed changes do not alter the substantive aspect of the subject regulation. Consistent with subsection 203(c)(2)(A) of the NHA, the revision to § 206.53(c) clarifies that the initial MIP may not exceed the difference between: Three percent of the maximum claim amount for the new HECM loan, and the amount of the initial MIP already charged and paid by the borrower for the existing HECM loan being refinanced.

In new § 206.53(c)(2), FHA proposes to codify HECM for Purchase program requirements implemented by HERA Mortgagee Letter 2009–11 which provide that existing HECM borrowers who participate in a HECM for Purchase transaction are ineligible for a refinance transaction because the HECM refinance authority is only applicable when the property that serves as collateral for FHA-insurance remains the same. As a result of this addition, FHA proposes to eliminate the first sentence of § 206.53(a), which states that this section implements subsection 255(k) of the NHA. While that statement remains true, the HECM for Purchase program authority rests in subsection 255(m) of the NHA, and to avoid any potential confusion, FHA simply prefers to eliminate the specific reference to subsection 255(k) of the NHA.

Deferral of Due and Payable Status (§§ 206.55, 206.57, 206.59, 206.61)

RMSA Mortgagee Letter 2014–07, as amended by RMSA Mortgagee Letter 2015–02, implemented an alternative interpretation of subsection 255(j) of the NHA to provide viable options for Non-Borrowing Spouses to remain in the homes they had previously shared with their borrower spouses after the death of their spouses. In general, if the last surviving borrower predeceases an Eligible Non-Borrowing Spouse, and if the Deferral Period requirements are satisfied, the due and payable status will be deferred for as long as the Eligible Non-Borrowing Spouse continues to meet the Qualifying Attributes, the Deferral Period requirements, all applicable terms and conditions of the mortgage and loan documents and all other applicable FHA requirements. In addition, except for limited circumstances, mortgagees are required to provide Eligible Non-Borrowing Spouses with 30 days to cure defaults that occur during the Deferral Period and reinstate the Deferral Period.

In this rule, FHA proposes to codify the Deferral Period requirements set out in RMSA Mortgagee Letters 2014–07 and 2015–02 in new sections 206.55, 206.57, 206.59, and 206.61, with minor changes as discussed below.

The policy currently in effect as a result of RMSA Mortgagee Letters 2014–07 and 2015–02 provides for three Qualifying Attributes: (1) The Non-Borrowing Spouse must have been the spouse of a HECM borrower at the time of loan closing and remained the spouse of such HECM borrower for the duration of the HECM borrower's lifetime; (2) the Non-Borrowing Spouse must have been properly disclosed to the mortgagee at origination and specifically named as an Eligible Non-Borrowing Spouse in the HECM mortgage and loan documents; and (3) the Non-Borrowing Spouse must have occupied, and must continue to occupy, the property securing the HECM as his or her principal residence. In this rule, FHA proposes to give the Commissioner flexibility to set other Qualifying Attributes criteria as necessary through the publication of a **Federal Register** notice for comment. The Qualifying Attributes criteria is found in § 206.55(c).

RMSA Mortgagee Letter 2015–02 stated that an "Eligible Non-Borrowing Spouse may become an Ineligible Non-Borrowing Spouse should any of the Qualifying Attributes cease to be met during the loan term." FHA takes the opportunity provided by this rulemaking to replace "may become" with "shall become" to make clear in § 206.55(c)(3) that if the Qualifying Attributes cease to be met, the previously Eligible Non-Borrowing Spouse will become an Ineligible Non-Borrowing Spouse.

FHA also takes the opportunity provided by this rulemaking to clarify that "ongoing legal right to remain" means a legal right to remain for life. This clarified requirement is found in § 206.55(d)(1). Further, FHA proposes to clarify in § 206.55(f) that nothing in § 206.55 may be construed as interrupting or interfering with the right of the borrower's estate or heir(s) to dispose of the property if they are otherwise legally entitled to do so.

FHA also proposes to clarify in § 206.59(d) that mortgagees must notify the Eligible Non-Borrowing Spouse within 30 days of the Deferral Period ending, unless the Deferral Period is reinstated. Also, this rule proposes to require the mortgagee to obtain documentation validating the reason for the cessation or reinstatement of the Deferral Period.

RMSA Mortgagee Letter 2014–07 specifically states that the proceeds of a HECM will not be disbursed to the borrower, borrower's estate, or the Non-Borrowing Spouse once the HECM is in a deferred due and payable status. FHA proposes to amend this statement in § 206.61(a) to broaden it and to clarify that during a Deferral Period, HECM proceeds may not be disbursed to any party, except as otherwise determined by the Commissioner through notice.

RMSA Mortgagee Letter 2014–07 also states that funds may be disbursed from a Repair Set Aside during a Deferral Period for the purpose of paying for repairs identified prior to origination as necessary to the insurance of the HECM, but that such repairs may only be paid for using the Repair Set Aside if the repairs are satisfactorily completed during the time period established in the Rider. However, FHA recognizes that there are situations in which, for a variety of reasons, repairs may not be completed within the originally established timeframe. Therefore, FHA proposes to provide flexibility to involved parties by allowing the Commissioner to extend the time period in which repairs must be completed in § 206.61(b).

Subpart C—Contract Rights and Obligations

Sale, Assignment and Pledge of Insured Mortgages (§ 206.101)

FHA's current regulation at § 206.101 refers to §§ 203.430 through 203.435. To provide greater clarity, in § 206.101, FHA proposes to restate these requirements, as applicable to the HECM program, instead of cross-referencing to other parts of FHA's regulations.

Insurance Funds (§ 206.102)

Currently, § 206.102 provides that mortgages insured under part 206 shall be obligations of the General Insurance Fund. However, Section 2118(b)(2) of HERA transferred obligations arising under the HECM program, for loans endorsed on or after October 1, 2008, from the FHA General Insurance Fund to the MMIF. This proposed rule updates the regulations accordingly.

Payment of MIP (§ 206.103)

FHA proposes to provide in § 206.103 that the payment of MIP shall be made to the Commissioner by the mortgagee in cash until the HECM is paid in full, foreclosed or a deed in lieu of foreclosure is recorded, or the property is otherwise sold, instead of until the contract of insurance is terminated.

Amount of MIP (§ 206.105)

This proposed rule updates § 206.105 which governs the MIP paid in connection with HECM loans. Currently, § 206.105(a) provides for an initial MIP of two percent of the maximum claim amount; § 206.105(b) provides for a monthly MIP that accrues daily on the outstanding loan balance at a rate equivalent to 0.5 percent per annum and is added to the outstanding loan balance when paid to the Secretary.

As previously noted, HERA transferred obligations arising under the HECM program from the FHA General Insurance Fund to the MMIF. Each FHA-insured mortgage which is an obligation of the MMIF is subject to the premium structure at subsection 203(c)(2)(A) of the NHA. As amended by HERA, subsection 203(c)(2)(A) states, in part, that "the Secretary shall establish and collect, at the time of insurance, a single premium payment in an amount not exceeding 3 percent of the amount of the original insured principal obligation of the mortgage."

In addition, NHA subsection 203(c)(2)(B) addresses annual mortgage insurance premiums. On August 12, 2010, the President signed into law Public Law 111–229,[23] which amended NHA subsection 203(c)(2)(B) to provide the Secretary with additional flexibility regarding the annual mortgage insurance premiums. Subsection 203(c)(2)(B) provides the Secretary with the discretion to decide to establish and collect annual mortgage insurance premiums in an amount not exceeding 1.50 percent of the remaining insured principal balance, or up to 1.55 percent for any mortgage involving an original principal obligation that is greater than 95 percent of appraised value of the property.

Public Law 111–229 also provides the Secretary with the discretion to adjust the initial MIP and annual MIP through notice published in the **Federal Register** or mortgagee letter which establishes the effective date for any premium adjustment therein.

With respect to the HECM program, for purposes of establishing the initial MIP, the original insured principal obligation of the mortgage is the maximum claim amount; therefore, consistent with the amendments to subsection 203(c)(2)(A) of the NHA, this proposed rule revises § 206.105(a) to specify that the Commissioner[24] may charge an initial MIP of up to three percent of the maximum claim amount. This rule also proposes to revise § 206.105(b), consistent with the amendments to subsection 203(c)(2)(B) of the NHA, to provide that the Commissioner[25] may establish and collect an annual MIP, which will accrue from the closing date, in an amount not to exceed 1.50 percent of the remaining insured principal balance, or up to 1.55 percent for any mortgage involving an original principal obligation that is greater than 95 percent of the appraised value of the property. FHA proposes to clarify that the MIP may be added to the loan balance when paid to the Commissioner. Moreover, the proposed rule adds a new paragraph (d) in § 206.105 stating the Commissioner's authority to adjust the amount of the initial and monthly MIP through notice.[26]

In addition, FHA proposes to codify provisions from RMSA Mortgagee Letter 2014–21 regarding the calculation of the initial MIP in a new paragraph (c) to § 206.105. Under existing authority, and as discussed above, the initial MIP may be adjusted by FHA through notice. Therefore, FHA proposes to codify the general framework for calculating the initial MIP, as described in RMSA Mortgagee Letter 2014–21, but not the specific initial MIP amounts, and will instead update the specific initial MIP amounts by notice, as necessary. FHA also proposes to make clear that any amount of funds set aside in a Servicing Fee Set Aside will not affect the initial MIP amount, even for those funds scheduled for payment during the First-12 Month Disbursement Period.

Mortgagee Election of Assignment or Shared Premium Option (§ 206.107)

FHA proposes to make conforming amendments to § 206.107(a) to account for the Deferral Period, which was introduced in RMSA Mortgagee Letter 2014–07. Specifically, in paragraph (a)(1), FHA proposes to clarify that the mortgagee may assign the HECM to the Commissioner if the outstanding loan balance is equal to or greater than 98 percent of the maximum claim amount, regardless of deferral status, or the borrower has requested a payment which exceeds the difference between the maximum claim amount and the outstanding loan balance and certain conditions, as specified in this section, are met. In subparagraph (a)(1)(iii), FHA proposes to expand upon one of these conditions, such that the HECM is either not due and payable under § 206.27(c)(1), or its due and payable status under § 206.27(c)(1) has been deferred pursuant to a Deferral Period.

FHA is also slightly revising the wording of § 206.107(a)(1)(iv) to clarify that the mortgagee shall have the option of assigning the mortgage to the Commissioner only if an event described in § 206.27(c)(2) has not occurred or the Commissioner has been notified of such occurrence but has denied approval for the mortgage to be due and payable.

Finally, to provide greater clarity, in § 206.107, FHA proposes to replace the cross-references to requirements in FHA's part 203 regulations with the actual requirements, as applicable to the HECM program, or cross-references to other sections within part 206.

FHA seeks public comment on the utility of FHA's shared premium option. Specifically, FHA requests comment on the following questions: Do mortgagees anticipate selecting the shared premium option in the future, and if not, what is the reasoning for not selecting the shared premium option?

Amount of Mortgagee Share of Premium (§ 206.109)

In current § 206.109, the amount of the mortgagee share of premium is determined based upon the age of the youngest borrower. To be consistent with the changes FHA made to the calculation of the principal limit in RMSA Mortgagee Letters 2014–07 and 2015–02, which bases the age factor on the age of the youngest borrower or Eligible Non-Borrowing Spouse, FHA proposes to amend § 206.109 to base the mortgagee share of premium on the age of the youngest borrower or Eligible Non-Borrowing Spouse.

Late Charge and Interest (§ 206.113)

In § 206.113(a), FHA currently requires the payment of a late charge when initial and monthly MIP are remitted to the Commissioner 10 days after the payment date in § 206.111(b). In § 206.113(b), FHA currently requires the mortgagee to pay interest on initial and monthly MIP remitted to the Commissioner more than 30 days after closing, and interest on monthly MIP remitted to the Commissioner more than 30 days after the payment date prescribed in § 206.111(b). However, FHA now has a web-based loan servicing system which was not in existence when this section was initially promulgated. This system, currently called HERMIT, reduces the amount of time needed to remit MIP. Therefore, it is no longer necessary to have such long time periods. In paragraph (a) of

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[23] The title of this public law is "To increase the flexibility of the Secretary of Housing and Urban Development with respect to the amount of premiums charged for FHA single family housing mortgage insurance and other purposes."

[24] While subsection 203(c)(2)(A) specifically provides that the "Secretary" shall establish and collect an initial MIP not to exceed three percent of the maximum claim amount, FHA proposes to use the term "Commissioner" to more accurately reflect HUD's delegations of authority from the Secretary to the Commissioner.

[25] While subsection 203(c)(2)(B) specifically provides the "Secretary" with discretion to decide whether to establish and collect annual MIP in an amount not exceeding 1.50 percent of the remaining insured principal balance, or up to 1.55 percent for any mortgage involving an original principal obligation that is greater than 95 percent of appraised value of the property, FHA proposes to use the term "Commissioner" to more accurately reflect HUD's delegations of authority from the Secretary to the Commissioner.

[26] While Public Law 111–229 provides the "Secretary" with the discretion to adjust the initial MIP and annual MIP through notice published in the **Federal Register** or mortgagee letter, FHA proposes to use the term "Commissioner" to more accurately reflect HUD's delegations of authority from the Secretary to the Commissioner and "notice" to more concisely convey the method of notification.

§ 206.113, FHA proposes to reduce the time period to 5 days for late charges. In paragraph (b) of § 206.113, FHA proposes to require the mortgagee to pay interest on initial MIP remitted to the Commissioner more than 20 days after closing, and interest on monthly MIP remitted to the Commissioner more than 5 days after the date in § 206.111(b).

In paragraph (c) of this section, FHA proposes to clarify that any interest, in addition to late charge, owed may not be added to the outstanding loan balance and must be paid by the mortgagee.

Insurance of Mortgage (§ 206.115)

FHA proposes to add a new § 206.115 to capture the content of § 203.255. As mentioned throughout this preamble, to provide greater clarity, FHA proposes to restate content from part 203 in FHA's part 206 regulations, as applicable to the HECM program, instead of cross-referencing to part 203 of FHA's regulations. Because the Lender Insurance program is currently unavailable for the HECM program, the Lender Insurance requirements of § 203.255 will not be included in this section.

In this section, FHA also proposes to add content originally from § 203.257 regarding creation of the mortgage insurance contract in paragraph (f).

Refunds (§ 206.116)

FHA's current regulation provides that no amount of the initial MIP shall be refundable. However, FHA recognizes that there are certain circumstances in which a refund would be warranted. Therefore, FHA proposes to provide for exemptions as authorized by the Commissioner.

Commissioner Authorized To Make Payments (§ 206.121)

Paragraph (c) of § 206.121 addresses second mortgages. Subsection 255(i)(2)(C) of the NHA permits FHA to require a subordinate mortgage from the borrower at any time in order to secure repayments of any funds advanced, or to be advanced to, the borrower. Throughout part 206, including § 206.121(c), FHA proposes to amend its regulations to permit the Commissioner, through notice, to require or not require a subordinate mortgage, which will align FHA's policy with the flexibility provided by the NHA. This flexibility will allow FHA to make a strategic decision about the necessity of subordinate mortgages, given various market factors and market changes.

The Commissioner has already stated, through RMSA Mortgagee Letter 2014–11, which limited the fixed interest rate product to the Single Lump Sum payment option, that the HECM Second Security Instrument and HECM Second Note were no longer required for fixed interest rate HECMs because there is no longer a risk of the Commissioner having to pay future advances to the borrower. At this time, the Commissioner is not changing the fixed interest rate HECM subordinate mortgage policy announced in RMSA Mortgagee Letter 2014–11. However, instead of codifying this change, FHA chooses to maintain the flexibility provided by subsection 255(i)(2)(C) of the NHA which allows the Commissioner to require a subordinate mortgage from the borrower of fixed or adjustable interest rate HECMs.

Claim Procedures in General (§ 206.123)

FHA proposes to make changes to this section that correspond with changes made to the definitions in § 206.3. In § 206.3, FHA proposes to add a new definition of borrower and amend the definition of mortgagor, such that a *mortgagor* means each original mortgagor under a mortgage and his heirs, executors, administrators and assigns; a *borrower* means a mortgagor who is an original borrower under the Loan Agreement and Note, but not including a borrower's successors and assigns. With these changes, it is no longer necessary for § 206.123(b) to provide for an expanded definition of mortgagor. Therefore, FHA proposes to amend newly renumbered paragraph (a)(2)(iii) such that it applies to borrowers and other permissible parties, which would include mortgagors as newly defined in § 206.3, and to remove and reserve paragraph (b).

Acquisition and Sale of the Property (§ 206.125)

The regulation at § 206.125(a) sets out the initial requirements of the mortgagee when the mortgage becomes due and payable. Paragraph (a)(1) currently requires the mortgagee to notify the Commissioner whenever the mortgage is due and payable under § 206.27(c)(1) or (c)(2). FHA proposes to provide more specificity to the timing of the required notification. FHA also proposes to make amendments to this paragraph in conformity with program changes made in RMSA Mortgagee Letters 2014–07 and 2015–02 regarding the Deferral Period. Together, these changes would require the mortgagee to notify the Commissioner within 60 days of the mortgage becoming due and payable when the conditions stated in the mortgage, as required by § 206.27(c)(1), have occurred or when the Deferral Period ends; the mortgagee is also required to notify the Commissioner within 30 days of one of the conditions stated in the mortgage, as required by § 206.27(c)(2), occurring.

FHA seeks public comment on the following questions: What is an appropriate timeframe, and how should such a timeframe be calculated, when title to the property insuring the HECM has been conveyed, since the mortgagee will not necessarily know that title has been conveyed or the date conveyance has occurred?

The current paragraph (a)(2) requires the mortgagee to provide notification to the borrower of the due and payable status, unless the mortgage is due and payable as a result of the borrower's death. FHA proposes to make conforming amendments to this paragraph as a result of program changes made in RMSA Mortgagee Letters 2014–07 and 2015–02 implementing a Deferral Period for Eligible Non-Borrowing Spouses, such that the mortgagee would be required to notify the borrower, Eligible Non-Borrowing Spouse, borrower's estate and borrower's heir(s), as applicable, within 30 days of the later of notifying the Commissioner of the due and payable status or receiving approval, if needed; the applicable party would have 30 days to engage in one of the permissible actions outlined in paragraph (a)(2) as discussed immediately below.

FHA proposes to make new changes to the permissible actions outlined in paragraph (a)(2), as well as conforming changes to bring the regulation in line with policy changes announced in RMSA Mortgagee Letter 2015–02. First, FHA proposes to amend paragraph (a)(2)(i) to include mortgagee advances as a required item for payment. Second, in paragraph (a)(2)(ii), which currently provides that the property may be sold for at least 95 percent of the appraised value, FHA proposes to provide more flexibility to the Commissioner to alter this percentage. The 95 percent requirement has proven at times to be too high, leading to unwanted foreclosures that possibly could have been avoided through sale of the property. This has been particularly true in recent years. The downturn in the housing market has resulted in declining values and an oversupply of housing stock. The market downturn highlights the need for flexibility in establishing the minimum percentage of the appraised value that FHA will accept after sale of the property securing the mortgage loan. To address this concern, this rule proposes to replace the 95 percent requirement with flexibility for the Commissioner to establish such amount, which shall not exceed 95 percent of the appraised value. FHA also proposes to make changes in this paragraph which will limit the amount of money FHA is paying through the claims process for closing costs. In conducting its oversight of the claims process, FHA is aware that some mortgagees are including excessive closing costs in their insurance claims. To stop this from occurring in the future, FHA proposes to more closely align HECM's policy regarding net proceeds requirements with those requirements for pre-foreclosure and Real Estate-Owned (REO) property policies, by requiring that the closing costs from the sale not exceed 11 percent of the sales price. In paragraph (a)(2)(iv), FHA proposes to codify the cure provision announced in RMSA Mortgagee Letter 2015–02, and in paragraph (a)(2)(vi), FHA proposes to allow for other actions as permitted by the Commissioner through notice.

FHA proposes to add paragraph (a)(4) to codify program changes announced in RMSA Mortgagee Letters 2014–07 and 2015–02 such that an Eligible Non-Borrowing Spouse could correct the condition which resulted in the Deferral Period ending and have the mortgage reinstated in accordance with § 206.57(d).

FHA proposes to amend paragraph (b) to correct an inadvertent drafting error resulting from an interim rule published on August 16, 1995. Prior to the effective date of this interim rule, § 206.125(b) provided that when a HECM became due and payable (typically upon the borrower's death), the property could be appraised at the borrower's request and at the borrower's expense. Section 206.125(b) also required the property to be appraised no later than 15 days before a foreclosure sale. Since FHA required the mortgagee to bid the appraised value for HECM foreclosures, an appraisal was needed before the foreclosure. The reason the borrower, or more likely, the borrower's estate might also want an appraisal is to help the estate decide whether to exercise its option to sell the property for the lesser of the outstanding loan balance or appraised value, per § 206.125(c). This short sale option is in FHA's interest, as it avoids foreclosure, holding, and sales expenses. However, to avoid such expenses, the estate would need to be provided with the appraised value much earlier than 15 days before the foreclosure sale. Therefore, FHA published an interim rule on August 16, 1995, at 60 FR 42754, stating in the preamble that it was requiring the mortgagee to appraise the property within 30 days of the borrower's death "instead" of 15 days before the foreclosure sale. However, the actual text of the rule provided for both the 30-day appraisal and 15-day appraisal, thereby inadvertently requiring two appraisals. This proposed change would correct multi-appraisal ordering that is costly to the mortgagee and to FHA by amending paragraph (b) to instead require the mortgagee to have the property appraised no later than 30 days after receipt of the request by an applicable party in connection with a potential property sale, and when a foreclosure sale is occurring, the appraisal must be performed within 30 days of the foreclosure sale.

In paragraph (c), FHA provides greater clarity around which parties are permitted to sell the property. FHA proposes to clarify that when the HECM is not due and payable, the borrower or an authorized representative of the borrower may sell the property for at least the lesser of the outstanding loan balance or appraised value; when the HECM is due and payable, the borrower or other party with legal right to dispose of the property may sell the property for a discounted percentage of appraised value in accordance with § 206.125(a)(2)(ii).

To provide more clarity around the timing requirements for mortgagees to initiate foreclosure, FHA proposes to amend paragraph (d)(1) of this section to base the six month timeframe within which a mortgagee must commence foreclosure off of the due date, as newly defined in proposed § 206.129(d)(1). Further, in paragraph (d)(2) of this section, in order to clarify existing policy, FHA proposes to add "city or municipality" after State, such that if the laws of the State, city or municipality in which the mortgaged property is located or Federal bankruptcy law does not permit foreclosure within the aforementioned timeframe, the mortgagee must initiate foreclosure within six months after the expiration of the time during which such foreclosure is prohibited by such laws. FHA also proposes to amend paragraph (d)(4) to allow the mortgagee to bid at a foreclosure sale an amount at least equal to the sum of the outstanding loan balance and incurred expenses, when that amount is less than the appraised value.

FHA proposes to amend paragraph (f) to clarify that a party with legal right to dispose of the property may provide the mortgagee with a deed in lieu of foreclosure. This rule also proposes to require that a deed in lieu of foreclosure, whether provided by the borrower or other party with legal right to dispose of the property, must be provided within 9 months of the due date. FHA did not previously impose a time period for this requirement, but limiting this to 9 months is important because such a timeframe will allow the borrower or other party with legal right to dispose of the property 6 months to attempt to sell the property and an additional 3 months to obtain a title search and get the deed signed, provided that title is clear. In this section, FHA also proposes to create a Cash for Keys initiative to incentivize borrowers to deed the property within 6 months of the due date.

Section 206.125(g) requires a mortgagee to make diligent efforts to sell the property within six months from the date the mortgagee acquired the property. FHA recognizes that there may be circumstances in which it is appropriate to provide more time, and therefore has reserved the ability to allow for additional time within which the mortgagee must sell the property.

Application for Insurance Benefits (§ 206.127)

When the mortgagee acquires title, FHA's current regulation at § 206.127 requires mortgagees to apply for the payment of insurance benefits within 15 days after the sale of the property by the mortgagee. If the property is not sold within six months from the date the mortgagee acquired title, the mortgagee must apply for another appraisal within a specified time period and apply for insurance benefits within 15 days of receipt of the new appraisal. When a party other than the mortgagee acquires title, FHA's current regulation at § 206.127 requires that the mortgagee apply for payment of the insurance benefits within 15 days after the other party acquires title. It has come to FHA's attention that mortgagees have experienced challenges in meeting these short time periods. Therefore, in this rule, FHA proposes to extend these time periods to 30 days, and where the mortgagee acquires title, FHA also proposes to provide flexibility to the Commissioner to extend the 30-day time period.

In addition, in § 206.127(a)(2), FHA's current regulation requires that mortgagees bear the cost of the appraisal where the mortgagee acquires title but does not sell the property within six months of acquiring title; however, this cost has historically been reimbursed through the claim process. FHA proposes to clarify that mortgagees are permitted to add the cost of the appraisal to the claim amount.

Section 206.127(c) refers to §§ 203.351 and 203.353. To provide greater clarity, FHA proposes to restate these requirements in part 206, as applicable to the HECM program, instead of cross-referencing to other parts of FHA's regulations. These requirements will be restated, as applicable to the HECM program, in §§ 206.135(a) and 206.136, respectively, and cited to in § 206.127(c).

Finally, FHA proposes to add a new paragraph (d) to clarify that mortgagees may only file an application for insurance benefits provided the contract of insurance has not terminated.

Payment of Claim (§ 206.129)

FHA proposes to revise § 206.129(d), which governs the computation of the amount of a HECM insurance claim. This determination is based on the mortgage "due date", which is the date the HECM became due and payable. Paragraph (d), as currently written, provides that the due date is the date the mortgagee notified the Secretary of the borrower's death under § 206.27(c)(1) or the date the Secretary granted approval to accelerate the loan under § 206.27(c)(2). These regulations do not account for the existence of a Deferral Period, as implemented by RMSA Mortgagee Letters 2014–07 and 2015–02. Accordingly, FHA proposes to revise § 206.129(d) in paragraph (d)(1) to provide that the *due date* is the date when the mortgagee notifies or should have notified the Commissioner that the mortgage is due and payable under the conditions stated in § 206.27(c)(1), or the date that the Deferral Period, as provided for in the mortgage by § 206.27(c)(3), ends; or the date the Commissioner approves a due and payable request as provided in the mortgage by § 206.27(c)(2).

The regulation at § 206.129(d) also provides for reimbursement to the mortgagee as part of the mortgage insurance claim when the mortgagee advances its corporate funds for the payment of property charges. The proposed rule, in general, prospectively limits insurance claim reimbursement to a mortgagee for advancement of the following property charges to two years of payments for each such charge, except that the Commissioner may approve an extension under such circumstances, terms, and conditions determined and specified as acceptable to the Commissioner: Taxes, ground rents, water rates, and utility charges that are liens prior to the mortgage; special assessments, which are noted on the application for insurance or which become liens after the insurance of the mortgage; and hazard insurance premiums on the mortgaged property.

FHA understands that borrowers may run into unexpected financial difficulty, causing their mortgagees to advance property charges in order to avoid declaring the loan due and payable. However, it is FHA's position that the need for property charge advances for a period greater than two years is a strong indication that a borrower's income and HECM proceeds are insufficient to meet the borrower's living expenses and cover property charges. The new limit on claims for insurance benefits for advances of property charges is intended to address this concern by encouraging mortgagees and borrowers to proactively work out mutually advantageous methods that will enable payment of property charges by the borrower or repayment of the property charges advanced by the mortgagee to avoid a due and payable status. However, FHA also recognizes that an absolute two year limitation may be too strict in certain circumstances and potentially cut-off attempts by the borrower and mortgagee to work out such solutions due to the deadline. Accordingly, this proposed rule authorizes limited exceptions to the two year period under circumstances prescribed by the Commissioner, but does not convey any right to the borrower to reach a resolution with the mortgagee.

In addition, § 206.129(d) refers to various sections in part 203 and § 204.322(l). To provide greater clarity, in § 206.129(d), FHA proposes to restate the requirements of part 203, as applicable to the HECM program, instead of cross-referencing to part 203. FHA also proposes, however, to eliminate the reference to § 204.322(l) altogether because it no longer exists.

Finally, FHA seeks feedback on the utility of instituting a pro rata interest and expense curtailment policy as was recently proposed for FHA's forward mortgages in Federal Housing Administration (FHA): Single Family Mortgage Insurance Maximum Time Period for Filing Insurance Claims, Curtailment of Interest and Disallowance of Operating Expenses Incurred Beyond Certain Established Timeframes (FR–5742–P–01). FHA specifically asks the follow questions:

(1) Should the HECM program provide for the pro rata curtailment of debenture interest and reduction of expenses incurred as a result of the mortgagee's delay in filing the mortgage insurance claim, and if so, how should such a policy be structured to ensure feasible implementation?

(2) What expenses are caused by or increase as a result of the mortgagee's delay in filing a mortgage insurance claim, and what expenses are not impacted by such a delay?

Termination of Insurance Contract (§ 206.133)

FHA proposes to revise paragraph (b) to renumber current paragraph (b) as (b)(1) and to add a new subparagraph (2) specific to termination of the insurance contract when a claim for insurance benefits will be presented.

Paragraph (e) of § 206.133 refers to the provisions of § 203.295 concerning voluntary terminations. To provide greater clarity, FHA proposes to restate the requirements of § 203.295, as applicable to the HECM program, in this section, instead of cross-referencing to a section in part 203.

In paragraph (f) FHA takes the opportunity provided by this rulemaking to clarify that when the insurance contract is terminated, the rights of the mortgagee shall also terminate. The current regulation unintentionally also references the rights of the borrower, but the borrower does not have any rights in regards to the insurance contract; that contract is between FHA and the mortgagee. In this paragraph, FHA also proposes to state that all obligations of the Commissioner shall cease immediately upon termination of the insurance contract, and such will apply prospectively.

Additional Requirements: §§ 206.134–206.146

As mentioned numerous times throughout this preamble, FHA is using the opportunity provided by this rulemaking to eliminate confusing cross-references to other parts of FHA's regulations and replace them with requirements specifically applicable to the HECM program. This is particularly true of part 203 references, for which regulations were written for the FHA forward mortgage product; the forward and reverse mortgage programs differ in many respects. In addition, cross references were appropriate at the time when the HECM program was a demonstration program of only 2,500 loans. This is no longer the case as the HECM program has been a full-fledged program for almost 20 years. Therefore, FHA proposes to add sections 206.134 through 206.146, which convey the content of a number of part 203 regulations, as applicable to the HECM program.

FHA proposes to make a few substantive changes from these part 203 provisions. In § 206.134, which contains material from § 203.343, FHA proposes to account for situations in which a dwelling is rebuilt upon an existing lot. Currently this section only allows the mortgagee, with the consent of the Commissioner, to accept an addition to or substitution of security for the purpose of removing a dwelling to a new lot, but FHA has encountered situations in which rebuilding a dwelling on the same lot is desirable. In § 206.135, which contains content from § 203.351, FHA proposes to amend the timing for the recorded assignment instrument, such that it must be forwarded to the Commissioner as soon as it is received by the mortgagee, but it need not be provided on the date the application for assignment is submitted. When the application for assignment is submitted, only a proposed assignment instrument would be required. Finally, in § 206.136, FHA proposes to address concerns with super lien states by requiring the HECM mortgage to be in first lien status prior to homeowners association and condo association liens.

Subpart D—Servicing Responsibilities

Providing Information (§ 206.203)

The current regulation at § 206.203(a) requires that the mortgagee provide the borrower with an annual statement summarizing mortgage activity during the calendar year. FHA has discovered that this requirement may have the potential for deferring notification to borrowers of important actions affecting their mortgage accounts. Further, current § 206.203(b) provides that the mortgagee shall provide the borrower with a statement of the account every time the mortgagee makes a line of credit disbursement. This may have the potential to impose an undue administrative burden on mortgagees, and also to deluge borrowers with multiple statements if several line of credit disbursements are requested within a given month. To alleviate these concerns, this proposed rule would revise § 206.203 to require the mortgagee to provide the borrower with a single statement at the end of each month summarizing account activity. The monthly statement shall be in a format acceptable to the Commissioner and contain the information that is currently required annually under § 206.203(a) for the specific month covered by the statement, as well as for the calendar year as of the date of the statement. This rule would therefore remove the requirements that the mortgagee provide the borrower with a statement of account activity every time it makes a line of credit payment or recalculates the monthly payments.

The current regulation at § 206.203(c) requires the mortgagee to provide the borrower with the name of the mortgagee's employee who has been specifically designated to respond to HECM loan inquiries. The requirement that a specific individual be named has proven to be impracticable, given the large number of HECM loans serviced by mortgagees and the fact that such inquiries are typically addressed by a team of employees rather than a single individual. Therefore, FHA proposes to require that the borrower be provided with the telephone number where the borrower may speak to employee(s) designated to address inquiries concerning their HECM loans. The use of the word "speak" in the regulatory language is deliberate. Although mortgagees would no longer be required to provide the name of a specific employee, it is important for mortgagees to ensure that their employees are tasked with receiving and responding to calls from HECM borrowers as opposed to having such calls routed to voicemail or handled through email.

In addition, because it is necessary for FHA to have access to information regarding individual accounts as part of FHA's oversight, in § 206.203(c)(3), FHA proposes to require mortgagees to respond to FHA requests for information concerning individual accounts, which mirrors forward mortgage requirements.

Finally, the regulation at § 206.203(c) currently provides that the "forward mortgage" requirements at § 203.508(a) and (b) pertaining to loan information to borrowers are also applicable to the HECM program. As mentioned earlier in this preamble, in order to provide greater clarity, FHA proposes to restate requirements in FHA's part 206 regulations, as applicable to the HECM program, instead of cross-referencing to other parts of FHA's regulations. Accordingly, FHA proposes to amend § 206.203 to provide the actual requirements of § 203.508(a) and (b) as applicable to the HECM program.

Property Charges (§ 206.205)

RMSA Mortgagee Letter 2014–21[27] implemented substantial changes to FHA's Property Charge Funding Requirements in § 206.205 to address increasing property charge defaults, which resulted in higher payouts of insurance claims. RMSA Mortgagee Letter 2014–21 provided that property charges are obligations of the borrower that are defined as taxes, hazard insurance premiums, any applicable flood insurance premiums, ground rents, condominium fees, and any other special assessments that may be levied by municipalities or state law.

The current regulation at § 206.205 provided that borrowers were responsible for the payment of property charges, but allowed the borrower to elect to require the mortgagee to pay certain property charges by withholding funds from monthly payments due to the borrower or by charging such funds to a line of credit. FHA's new policy, announced in RMSA Mortgagee Letter 2014–21, however, provided additional methods for the payment of property charges, and specified the conditions under which these methods must or may be used.

Based on the results of the Financial Assessment, for fixed or adjustable interest rate HECMs, the mortgagee may require a LESA for the payment of certain property charges. For fixed interest rate HECMs, if a LESA is required, it must be a Fully-Funded LESA. For adjustable interest rate HECMs only, based on the results of the Financial Assessment, the mortgagee may require the LESA to be Partially- or Fully-Funded. If the mortgagee does not require a LESA, a borrower who selects an adjustable interest rate HECM may elect to have a Fully-Funded LESA, elect to have the mortgagee pay such property charges, or elect to be responsible for the independent payment of all property charges. If the mortgagee does not require a LESA, a borrower with a fixed interest rate HECM may elect to have a Fully-Funded LESA or elect to be responsible for the independent payment of all property charges.

This rule proposes to amend § 206.205 to codify FHA's property charge requirements announced in RMSA Mortgagee Letter 2014–21 with some exceptions and further amendments as discussed below.

As mentioned earlier in this preamble in regards to the definition of "property charges," RMSA Mortgagee Letter 2014–21 did not include utilities in its definition, but FHA is now proposing to add utilities as a borrower responsibility. Corresponding amendments are proposed for the definition of "property charges" in § 206.3.

RMSA Mortgagee Letter 2014–21 listed specific details about the information that a mortgagee must provide to the borrower in the section titled "Information to the Mortgagor." In this rule, FHA does not propose to codify in FHA's part 206 regulations the requirement regarding information to be provided to borrowers because that section of RMSA Mortgagee Letter 2014–21 is more appropriately characterized as guidance.

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[27] FHA initially implemented changes to HECM's Property Charge Funding Requirements in RMSA Mortgagee Letter 2013–27, but that RMSA mortgagee letter was superseded by RMSA Mortgagee Letter 2014–21.

Similarly, RMSA Mortgagee Letter 2014–21 listed specific details about what is to be included in a notice to the borrower when the borrower fails to make property charge payments in sections titled "Mortgagor Non-Payment of Property Charges—Fully-Funded Life Expectancy Set Aside—Adjustable Rate HECMs" and "Mortgagor Non-Payment of Property Charges—Partially-Funded Life Expectancy Set Aside." In this rule, FHA does not propose to codify in FHA's part 206 regulations the requirements regarding information that is to be provided to borrowers because that content is more appropriately characterized as guidance.

RMSA Mortgagee Letter 2014–21 states that if the insured first mortgage is assigned to the Commissioner, or if payments are made through the second mortgage under the Demand Assignment process, the Commissioner is not required to assume the responsibility for property charge payments, but may continue to administer payments for property charges for borrowers from any funds available in the LESA. In this rule, FHA proposes to further provide that for adjustable interest rate HECMs, if the LESA has a positive remaining balance but funds are insufficient to pay all property charges due or semi-annual disbursements to the borrower, the Commissioner may provide the remaining funds to the borrower as line of credit.

FHA is also proposing amendments to § 206.205 that were not included in RMSA Mortgagee Letter 2014–21 for situations in which the borrower is not required to have a LESA and elects to pay the property charges himself. The failure to pay required property charges not only places the borrower at risk of foreclosure and loss of the home, and prompts mortgagees to incur the costs of advancing its corporate funds, but it also potentially increases losses to the MMIF. Specifically, FHA is proposing to require the mortgagee to notify the borrower and Commissioner that an obligation of the mortgage has not been performed within 30 days of the mortgagee becoming aware of a missed property charge payment and there are no available HECM funds from which the mortgagee can make the payment. The borrower would then have 30 days to respond to the mortgagee to explain the circumstances which resulted in the non-payment. FHA also proposes to state that the mortgagee may provide any permissible loss mitigation options to the borrower. If the borrower is unable or unwilling to repay the mortgagee for any funds advanced by the mortgagee to pay property charges outside of a LESA, the mortgagee must submit a due and payable request under the provisions of § 206.27(c)(2).

Allowable Charges and Fees After Endorsement (§ 206.207)

In § 206.207(a), FHA's current regulation includes references to a number of regulatory provisions in part 203. To provide greater clarity, FHA proposes to restate these requirements in FHA's part 206 regulations, as applicable to the HECM program, instead of cross-referencing to other parts of FHA's regulations.

In § 206.207(b), FHA proposes to clarify that a mortgagee may collect a servicing charge beginning with the month of closing and continuing through a Deferral Period. FHA also proposes to allow a servicing charge to be included in the mortgage Note rate, in an amount set by the Commissioner through notice which shall be between 36 and 150 basis points.

FHA specifically solicits public comment on the following questions:

(1) What is an appropriate servicing fee range (minimum and maximum dollar amounts) for the flat monthly servicing fee, and what factors support the upper and lower bounds of that range?

(2) What is an appropriate servicing fee range, in basis points, that could be included in the Note rate, and what factors support the upper and lower bounds of that range?

Prepayment (§ 206.209)

FHA proposes to make clarifying changes in paragraph (a) to distinguish from when a borrower repays a mortgage in full and prepays a mortgage in part. FHA also proposes to add a new paragraph (c) to specify that any funds received from a partial prepayment must be applied in accordance with the Note.

Determination of Principal Residence and Contact Information (§ 206.211)

The current regulation at § 206.211 requires that the mortgagee verify, at least annually, whether the property is the principal residence of at least one borrower. To further facilitate communications between the mortgagee and borrower, this proposed rule builds upon this provision by requiring that the mortgagee also verify the borrower's contact information, including whether the borrower may voluntarily wish to designate an alternative point of contact for notifications from the mortgagee.

In addition, FHA proposes to codify changes made to the determination of principal residence and contact information that were implemented by RMSA Mortgagee Letters 2014–07 and 2015–02. Consistent with the requirements announced in these RMSA mortgagee letters, FHA proposes to amend § 206.211 to require the mortgagee, where an Eligible Non-Borrowing Spouse has been identified, to obtain an additional certification from the borrower confirming the Eligible Non-Borrowing Spouse remains his or her spouse and the Eligible Non-Borrowing Spouse continues to reside in the property as his or her principal residence. Upon the death of a borrower with an Eligible Non-Borrowing Spouse, the Eligible Non-Borrowing Spouse is required to submit the annual certification as long as that spouse remains an Eligible Non-Borrowing Spouse.

Subpart E—HECM Counselor Roster

HECM Counselor Roster (§§ 206.302, 206.304, 206.306 and 206.308)

FHA proposes to clarify that counselors, in addition to being listed on the HECM Counselor Roster, must be employed by a participating agency. FHA proposes to define "participating agency" in § 206.3.

FHA proposes to make minor amendments to §§ 206.304, 206.306 and 206.308 to differentiate between when a counselor is a "housing counselor," and when a counselor becomes a "HECM counselor."

In addition, FHA proposes to remove the grandfathering clause in § 206.304(c) because the time for which it was applicable has passed.

3. Technical Amendments

The definition of "principal limit" in § 206.3 incorrectly cites to § 209.209(b). The correct citation is § 206.209(b).

In § 206.9(a), FHA cites to requirements in section 255(b)(3) of the NHA, but § 206.9(a) should actually cite to subsections 255(b)(2) and 255(d)(1) of the NHA.

In § 206.16, the reference to § 206.17 should be changed to § 206.107.

In § 206.23(d), the third "mortgagee" should be changed to "mortgage".

In § 206.43(b)(1), the reference to § 206.29 should be changed to § 206.25, as § 206.29 has been merged with § 206.25.

In § 206.53(b), the references to paragraphs (c) and (d) should be changed to (d) and (e), respectively.

In § 206.125(a)(3), "forclosure" is misspelled and should be changed to "foreclosure" and in § 206.125(c), the two references to § 206.27(e) should be changed to § 206.27(d), as paragraph (e) does not exist.

"Mortagee" in § 206.127(a)(2) should be changed to "mortgagee" to correct an inadvertent spelling error.

In § 206.43(a), a reference is made to 24 CFR 3500.7, and in § 206.201(c)(2)(i), a reference is made to 24 CFR 3500.21(e)(2). However, effective July 21, 2011, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred rulemaking authority for a number of consumer financial protection laws from seven Federal agencies to the Bureau of Consumer Financial Protection (Bureau) as of July 21, 2011, including, from HUD, the Real Estate Settlement Procedures Act of 1974 (RESPA) which had previously been implemented in HUD's Regulation X, 24 CFR part 3500. See sections 1061 and 1098 of the Dodd-Frank Act. In these section, FHA proposes to cite to 12 CFR 1024.7 and 12 CFR 1024.21(e)(2), respectively, where these provisions are now codified.

In current § 206.205(d), which FHA proposes to redesignate as § 206.205(d)(1), the reference to § 206.121(a) is incorrect and should be changed to § 206.121(b).

IV. Questions for Commenters

HUD welcomes comments on all aspects of the proposal, including the Regulatory Impact Analysis (RIA) attached to this proposed rule. In addition, there are several provisions in the rule that FHA would like to note for special consideration and is seeking public comments.

A. Maximum Closing Costs Allowed on Sale of Property

The flexibility provided in this rule to sell properties for less than the full appraised value necessitates limits to the amount of closing costs FHA should allow to be deducted from sales proceeds. This rule proposes to require that the closing costs from the sale be no more than 11 percent of the sales price. FHA specifically invites comments regarding

1. Is 11 percent a reasonable cap? FHA chose this percentage based on the policy for sale of its REO inventory, which allows for payment of 6 percent sales commission and 5 percent for other closing costs, but is interested in comments to indicate whether the amount should be higher or lower, and why the commenter believes the adjustment is appropriate.
2. Should FHA implement a tiered approach to the maximum percent of closing costs in relation to the sales price? For example, should a property selling for under $100,000 be allowed a higher percentage of closing costs than a property selling for over $100,000?
3. Should FHA implement a tiered approach to the maximum dollar amount of closing costs in relation to the sales price? For example, should a property selling for under $100,000 be allowed a different dollar amount than a property selling for over $100,000?

B. Utilities

FHA proposes to amend the definition of "property charges" to include utilities as a borrower obligation under the terms of the Mortgage that must be satisfied by the borrower, as applied in § 206.205 of the proposed rule. Failure to pay utilities that result in a lien against the property would potentially trigger a due and payable event. FHA requests comments on this proposal and the following:

1. What utilities, if any, should be defined as property charges?
2. When should a utility bill result in due and payable status?
3. How do mortgagees currently receive notice of delinquent utility bills and potential liens on the property?

C. Property Inspection & Repairs Subsequent to Closing

With the dwelling serving as security for the loan, it is important that the dwelling be maintained as the loan ages. To ensure that the borrower complies with their obligation under the mortgage to maintain the property in good repair, FHA is considering establishing a requirement in the final rule for Mortgagees to conduct periodic inspections of the property for the life of the HECM and allowing the cost of inspection to be included as a reasonable and customary charge that may be collected and added to the borrower's loan balance. If such a requirement is included in the final rule and the property requires repairs, FHA anticipates that where funds are available from the HECM proceeds for adjustable interest rate HECMs, it may allow the mortgagee to establish a Repair Set Aside to ensure that necessary repairs are made. FHA would further anticipate that where a property inspection during a Deferral Period identifies necessary repairs, a Repair Set Aside may not be established. The Eligible Non-Borrowing Spouse would be responsible for making any required repairs identified during a Deferral Period within a specified timeframe. FHA specifically invites comment on the following questions:

1. What is the appropriate frequency of property inspections, including whether more or less frequent inspections may be necessary under certain conditions (for example, if a property is newly constructed, a prior inspection indicated disrepair, or following a disaster event), and whether interior and exterior inspections should be required at the same frequency?
2. Should inspections consist of exterior inspections only, or should they also include interior inspections?
3. Should the borrower be required to complete the repairs within one year of the date the property was inspected?
4. When no HECM funds are available and the borrower or, if applicable, Eligible Non-Borrowing Spouse, does not have funds to make the needed repairs, how else might repairs be funded?
5. What types or categories of items for repair should a property inspector identify as being necessary? In what ways, if any, should this differ from the condition status of the property at origination?
6. What are the methods and standards the property inspector should employ when conducting the property inspection to identify items that are in need of repair?
7. If a Repair Set Aside was established to complete repairs identified during a periodic inspection and the HECM borrower passes away prior to the completion of repairs, should FHA consider allowing funds to be disbursed from a Repair Set Aside during a Deferral Period for the purpose of paying for necessary repairs identified during the property inspection?
8. What would be the potential costs to borrowers and servicers associated with periodic inspections? What benefits would result from periodic inspections and do they outweigh these costs?
9. As an alternative to the requirement proposed by this rule, HUD could require inspections consistent with the risks presented in each loan, such as the amount of the outstanding balance in relation to the value of the property and the age of the home. Would such an approach be more effective for both maintaining the value of the property and reducing costs for FHA and borrowers?

D. Non-Borrowing Spouse Communication

FHA understands that Non-Borrowing Spouses and successors in interest may face difficulties after the death of the borrower in understanding and exercising their rights with regard to the mortgage. In addition to the counseling required for all borrowers, the proposed rule would require additional housing counseling for Non-Borrowing Spouses to explain how and when the HECM would become due and payable. FHA specifically invites comment on the following questions:

1. What difficulties have Non-Borrowing Spouses, heirs, and successors in interest had in obtaining information about HECMs and understanding and exercising their rights?

2. What adjustments could FHA make to this rule to address the identified difficulties and facilitate communication with Non-Borrowing Spouses, heirs, and successors in interest?

E. Regulatory Impact Analysis—Benefits and Costs

HUD also welcomes comments on all aspects of the RIA to this proposed rule and would welcome any additional information or insight commenters may have on the benefits and costs of each provision of the rule. HUD's full RIA is available for review and comment at Regulations.gov.

V. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this proposed rule are pending approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Collection Numbers 2502–0524 and 2502–0611. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of respondents	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
206.59 Mortgagee notifies NBS of the end of the Deferral Period.	10	10,000	0.17	1,700.
206.125 Mortgagee notifies NBS of D&P status and applicable options.	10	10,000	0.10	1,000.
206.125 Notification of D&P status to HUD when Deferral Period ends.	10	10,000	0.10	1,000.
206.203 Information Sharing with HUD	10	12,844,433 (automated)	0.15 (automated)	1,926,665 (automated)
	10	10,000 (manual)	1 (manual)	10,000 (manual).
206.211 NBS Annual Occupancy Certification	10	24,000	0.33	7,920.
Totals	10	12,908,433		1,948,285.

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR–5353) and must be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: (202) 395–6947 and Reports Liaison Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Regulatory Review—Executive Orders 12866 and 13563

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule was an economically significant rule under the order. The docket file is available for public inspection in the Regulations Division, Office of General Counsel, U.S. Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC, 20410–0500. The Initial Economic Analysis prepared for this rule is also available for public inspection in the Regulations Division. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339.

Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule reduces burdens on mortgagees by codifying all regulatory policy related to the HECM program in one place. Absent this proposed rule, mortgagees would have to deduce the current program requirements by comparing a number of mortgagee letters to the current HECM regulations at 24 CFR part 206 and determining which regulatory content has, in effect, been superseded by HERA and RMSA mortgagee letters.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Many of the policies discussed in this proposed rule, such as the requirement that mortgagees perform a Financial Assessment of prospective HECM borrowers, the requirements of the HECM for Purchase program, the introduction of the Single Lump Sum payment option, and the limitation on disbursements during the First 12-Month Disbursement Period, have already been implemented by mortgagees large and small. The codification of these policies will not impact large or small mortgagees, other than easing burden by providing them with one location to find all HECM regulatory requirements.

The new policy changes proposed by this rule would address important concerns with the HECM program, including the risk the program has, in the past, posed to the MMIF, as well as the continued availability of this program for seniors. Some of the new policy proposals are expected to relieve burdens on all mortgagees, large and small. For example, the amendment to the definition of "expected average mortgage interest rate" providing the mortgagee with the ability to lock-in the expected average mortgage interest rate prior to the date of loan closing will align the provision with current industry policy. Removing the duplicative appraisal requirement and creating a Cash for Keys incentive structure will both relieve burden on mortgagees. Other policies are expected to increase burdens on mortgagees, although are not expected to raise to the level of having a significant impact on a substantial number of small entities. For example, all mortgagees would be required to disclose all available HECM program options. To minimize the effect of this provision on all mortgagees, FHA intends to create disclosure documents listing all available options for mortgagees to provide to prospective borrowers. Also, while new lifetime interest rate caps for monthly adjustable interest rate HECMs will affect large and small mortgagees, the impact will be limited because the industry currently self-imposes a 10 percent life-of-loan cap on monthly adjustable interest rate HECMs. FHA believes that these policies are reasonable and provide mitigating features so that the FHA-approved mortgagees, large and small, will not be adversely affect by these policies.

Notwithstanding FHA's determination that this rule will not have a significant effect on a substantial number of small entities, FHA specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble to this rule.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule imposes either substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for Home Equity Conversion Mortgages is 14.183.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects

24 CFR Part 30

Administrative practice and procedure, Grant programs-housing and community development, Loan programs-housing and community development, Mortgage insurance, Penalties.

24 CFR Part 206

Aged condominiums, loan programs, housing and community development, mortgage insurance, reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR parts 30 and 206 to read as follows:

PART 30—CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

■ 1. The authority citation for part 30 continues to read as follows:

Authority: 12 U.S.C. 1701q–1; 1703, 1723i, 1735f–14, and 1735f–15; 15 U.S.C. 1717a; 28 U.S.C. 2461 note; 42 U.S.C. 1437z–1 and 3535(d).

■ 2. Revise paragraphs (a)(8) and (a)(10) of § 30.35 to read as follows:

§ 30.35 Mortgagees and lenders.

(a) * * *

(8) Fails to timely submit documents that are complete and accurate in connection with a conveyance of a property or a claim for insurance benefits, in accordance with §§ 203.365, 203.366 or 203.368; or a claim for insurance benefits in accordance with § 206.127 of this title.

* * * * *

(10) Fails to service FHA insured mortgages, in accordance with the requirements of 24 CFR parts 201, 203, 206 and 235.

* * * * *

■ 3. Revise part 206 to read as follows:

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

Subpart A—General

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206.1 Purpose.
206.3 Definitions.
206.7 Effect of amendments.
206.8 Preemption.

Subpart B—Eligibility; Endorsement

206.9 Eligible mortgagees.
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206.15 Insurance.

Mortgages

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206.19 Payment options.
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206.23 Shared appreciation.
206.25 Calculation of disbursements.
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206.31 Allowable charges and fees.
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Eligible Borrowers

206.33 Age of borrower.
206.34 Limitation on number of mortgages.
206.35 Title of property which is security for HECM.
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206.39 Principal residence.
206.40 Disclosure, verification and certifications.
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Eligible Properties

206.45 Eligible properties.
206.47 Property standards; repair work.
206.51 Eligibility of mortgages involving a dwelling unit in a condominium.
206.52 Eligible sale of property—HECM for Purchase.

Refinancing of Existing Home Equity Conversion Mortgages

206.53 Refinancing a HECM loan.

Deferral of Due and Payable Status

206.55 Deferral of due and payable status for Eligible Non-Borrowing Spouses.
206.57 Cure provision enabling reinstatement of Deferral Period.
206.59 Obligations of mortgagee.
206.61 HECM proceeds during a Deferral Period.

Subpart C—Contract Rights and Obligations

Sale, Assignment and Pledge

206.101 Sale, assignment and pledge of insured mortgages.
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Mortgage Insurance Premiums

206.103 Payment of MIP.
206.105 Amount of MIP.
206.107 Mortgagee election of assignment or shared premium option.
206.109 Amount of mortgagee share of premium.
206.111 Due date of MIP.
206.113 Late charge and interest.
206.115 Insurance of mortgage.
206.116 Refunds.

HUD Responsibility to Borrowers

206.117 General.
206.119 [Reserved]
206.121 Commissioner authorized to make payments.

Claim Procedure

206.123 Claim procedures in general.
206.125 Acquisition and sale of the property.
206.127 Application for insurance benefits.
206.129 Payment of claim.

Condominiums

206.131 Contract rights and obligations for mortgages on individual dwelling units in a condominium.

Termination of Insurance Contract

206.133 Termination of insurance contract.

Additional Requirements

206.134 Partial release, addition or substitution of security.
206.135 Application for insurance benefits and fiscal data.
206.136 Conditions for assignment.
206.137 Effect of noncompliance with regulations.
206.138 Mortgagee's liability for certain expenditures.
206.140 Inspection and preservation of properties.
206.141 Property condition.
206.142 Adjustment for damage or neglect.
206.143 Certificate of property condition.
206.144 Final payment.
206.145 Items deducted from payment.
206.146 Debenture interest rate.

Subpart D—Servicing Responsibilities

206.201 Mortgage servicing generally; sanctions.
206.203 Providing information.
206.205 Property charges.
206.207 Allowable charges and fees after endorsement.
206.209 Prepayment.
206.211 Determination of principal residence and contact information.

Subpart E—HECM Counselor Roster

206.300 General.
206.302 Establishment of the HECM Counselor Roster.
206.304 Eligibility for placement on the HECM Counselor Roster.
206.306 Removal from the HECM Counselor Roster.
206.308 Continuing education requirements of counselors listed on the HECM Counselor Roster.

Authority: 12 U.S.C. 1715b, 1715z–20; 42 U.S.C. 3535(d).

Subpart A—General

§ 206.1 Purpose.

The purposes of the Home Equity Conversion Mortgage (HECM) Insurance program are set out in section 255(a) of the National Housing Act, Public Law 73–479, 48 STAT. 1246 (12 U.S.C. 1715z–20) ("NHA").

§ 206.3 Definitions.

As used in this part, the following terms shall have the meaning indicated.

Borrower means a mortgagor who is an original borrower under the HECM Loan Agreement and Note. The term does not include successors or assigns of a borrower.

Borrower's Advance means the funds advanced to the borrower at the closing of a fixed interest rate HECM in accordance with § 206.25.

CMT Index means the U.S. Constant Maturity Treasury Index.

Commissioner means the Federal Housing Commissioner or the Commissioner's authorized representative.

Contract of insurance means the agreement evidenced by the issuance of a Mortgage Insurance Certificate or by the endorsement of the Commissioner upon the credit instrument given in connection with an insured mortgage, incorporating by reference the regulations in subpart C of this part and the applicable provisions of the National Housing Act.

Day means calendar day, except where the term *business day* is used.

Deferral Period means the period of time following the death of the last surviving borrower during which the due and payable status of a HECM is deferred for an Eligible Non-Borrowing Spouse provided that the Qualifying Attributes and all other FHA requirements continue to be satisfied.

Eligible Non-Borrowing Spouse means a Non-Borrowing Spouse who meets all Qualifying Attributes for a Deferral Period.

Estate planning service firm means an individual or entity that is not a mortgagee approved under part 202 of this chapter or a participating agency approved under subpart B of 24 CFR part 214 and that charges a fee that is:

(1) Contingent on the prospective borrower obtaining a mortgage loan under this part, except the origination fee authorized by § 206.31 or a fee specifically authorized by the Commissioner; or

(2) For information that borrowers and Eligible and Ineligible Non-Borrowing Spouses, if applicable, must receive under § 206.41, except a fee by:

(i) A participating agency approved under subpart B of 24 CFR part 214; or

(ii) An individual or company, such as an attorney or accountant, in the *bona fide* business of generally providing tax or other legal or financial advice; or

(3) For other services that the provider of the services represents are, in whole or in part, for the purpose of improving a prospective borrower's access to mortgages covered by this part, except where the fee is for services specifically authorized by the Commissioner.

Expected average mortgage interest rate means the interest rate used to calculate the principal limit established at closing. For fixed interest rate HECMs, the expected average mortgage interest rate is the same as the fixed mortgage (Note) interest rate and is set simultaneously with the fixed interest rate. For adjustable interest rate HECMs, it is either the sum of the mortgagee's margin plus the weekly average yield for U.S. Treasury securities adjusted to a constant maturity of 10 years, or it is the sum of the mortgagee's margin plus the 10-year LIBOR swap rate, depending on which interest rate index is chosen by the borrower. The margin is determined by the mortgagee and is defined as the amount that is added to the index value to compute the expected average mortgage interest rate. The index type (CMT or LIBOR) used to calculate the expected average mortgage interest rate must be the same index type used to calculate mortgage interest rate adjustments—commingling of index types is not allowed. The mortgagee's margin is the same margin used to determine the initial interest rate and the periodic adjustments to the interest rate. Mortgagees, with the agreement of the borrower, may simultaneously lock-in the expected average mortgage interest rate and the mortgagee's margin prior to the date of loan closing or simultaneously establish the expected average mortgage interest rate and the mortgagee's margin on the date of loan closing.

First 12-Month Disbursement Period means the period beginning on the day of loan closing and ending on the day before the loan closing anniversary date. When the day before the anniversary date of loan closing falls on a Federally-observed holiday, Saturday, or Sunday, the end period will be on the next business day after the Federally-observed holiday, Saturday or Sunday.

HECM means a Home Equity Conversion Mortgage.

HECM counselor means an independent third-party that is currently active on FHA's HECM Counselor Roster and that is not, either directly or indirectly, associated with or compensated by, a party involved in originating, servicing, or funding the HECM, or the sale of annuities, investments, long-term care insurance, or any other type of financial or insurance product who provides statutorily required counseling to prospective borrowers who may be eligible for or interested in obtaining an FHA-insured HECM. This counseling assists elderly prospective borrowers who seek to convert equity in their homes into income that can be used to pay for home improvements, medical costs, living expenses, or other expenses.

Ineligible Non-Borrowing Spouse means a Non-Borrowing Spouse who does not meet all Qualifying Attributes for a Deferral Period.

Initial Disbursement Limit means the maximum amount of funds that can be advanced to a borrower of an adjustable interest rate HECM allowed at loan closing and during the First 12-Month Disbursement Period in accordance with § 206.25.

Insured mortgage means a mortgage which has been insured as evidenced by the issuance of a Mortgage Insurance Certificate.

LIBOR means the London Interbank Offered Rate.

Loan documents mean the credit instrument, or Note, secured by the lien, and the loan agreement.

Mandatory Obligations are fees and charges incurred in connection with the origination of the HECM that are requirements for loan approval and which will be paid at closing or during the First 12-Month Disbursement Period in accordance with § 206.25.

Maximum claim amount means the lesser of the appraised value of the property, as determined by the appraisal used in underwriting the loan; the sales price of the property being purchased for the sole purpose of being the principal residence; or the national mortgage limit for a one-family residence under subsections 255(g) or (m) of the National Housing Act (as adjusted where applicable under section 214 of the National Housing Act) as of the date of loan closing. The initial mortgage insurance premium must not be taken into account in the calculation of the maximum claim amount. Closing costs must not be taken into account in determining appraised value.

MIP means the mortgage insurance premium paid by the mortgagee to the Commissioner in consideration of the contract of insurance.

Mortgage means a first lien on real estate under the laws of the jurisdiction where the real estate is located. If the dwelling unit is in a condominium, the term *mortgage* means a first lien covering a fee interest or eligible leasehold interest in a one-family unit in a condominium project, together with an undivided interest in the common areas and facilities serving the project, and such restricted common areas and facilities as may be designated. The term refers to a security instrument creating a lien, whether called a *mortgage, deed of trust, security deed,* or another term used in a particular jurisdiction.

Mortgagee means original lender under a mortgage and its successors and assigns, as are approved by the Commissioner.

Mortgagor means each original mortgagor under a HECM mortgage and his heirs, executors, administrators and assigns.

Non-Borrowing Spouse means the spouse, as defined by the law of the state in which the spouse and borrower reside or the state of celebration, of the HECM borrower at the time of closing and who is also not a borrower.

Participating agency means all housing counseling and intermediary organizations participating in HUD's Housing Counseling program, including HUD-approved agencies, and affiliates and branches of HUD-approved intermediaries, HUD-approved multi-state organizations (MSOs), and state housing finance agencies.

Principal limit means the maximum amount calculated, taking into account the age of the youngest borrower or Eligible Non-Borrowing Spouse, the expected average mortgage interest rate, and the maximum claim amount. The principal limit is calculated for the first month that a mortgage could be outstanding using factors provided by the Commissioner. It increases each month thereafter at a rate equal to one-twelfth of the mortgage interest rate in effect at that time, plus one-twelfth of the annual mortgage insurance rate. For an adjustable interest rate HECM, the principal limit increase may be made available for the borrower each month thereafter except that the availability during the First 12-Month Disbursement Period may be restricted. Although the principal limit of a fixed interest rate HECM will continue to increase at the rate provided by the Commissioner, no further funds may be made available for the borrower to draw against after closing. The principal limit may decrease because of insurance or condemnation proceeds applied to the outstanding loan balance under § 206.209(b).

Principal residence means the dwelling where the borrower and, if applicable, Non-Borrowing Spouse, maintain their permanent place of abode, and typically spend the majority of the calendar year. A person may have only one principal residence at any one time. The property shall be considered to be the principal residence of any borrower who is temporarily in a health care institution provided the borrower's residency in a health care institution does not exceed twelve consecutive months. The property shall be considered to be the principal residence of any Non-Borrowing Spouse, who is temporarily in a health care institution, as long as the property is the principal residence of his or her borrower spouse, who physically resides in the property. During a Deferral Period, the property shall continue to be considered to be the principal residence of any Non-Borrowing Spouse, who is temporarily in a health care institution, provided he or she qualified as an Eligible Non-Borrowing Spouse and physically occupied the property immediately prior to entering the health care institution and his or her residency in a health care institution does not exceed twelve consecutive months.

Property charges means, unless otherwise specified, obligations of the borrower that include property taxes, hazard insurance premiums, any applicable flood insurance premiums, ground rents, condominium fees, planned unit development fees, homeowners association fees, any other special assessments that may be levied by municipalities or state law, and utilities.

Qualifying Attributes means the requirements which must be met by a Non-Borrowing Spouse in order to be an Eligible Non-Borrowing Spouse.

§ 206.7 Effect of amendments.

The regulations in this part may be amended by the Commissioner at any time and from time to time, in whole or in part, but amendments to subparts B and C of this part will not adversely affect the interests of a mortgagee on any mortgage to be insured for which either the Direct Endorsement mortgagee or Lender Insurance mortgagee has approved the borrower and all terms and conditions of the mortgage, or the Commissioner has made a commitment to insure. Such amendments will not adversely affect the interests of a borrower in the case of a default by a mortgagee where the Commissioner makes payments to the borrower.

§ 206.8 Preemption.

(a) *Lien priority.* The full amount secured by the mortgage shall have the same priority over any other liens on the property as if the full amount had been disbursed on the date the initial disbursement was made, regardless of the actual date of any disbursement. The amount secured by the mortgage shall include all direct payments by the mortgagee to the borrower and all other loan advances permitted by the mortgage for any purpose, including loan advances for interest, property charges, mortgage insurance premiums, required repairs, servicing charges, counseling charges and costs of collection, regardless of when the payments or loan advances were made. The priority provided by this section shall apply notwithstanding any State constitution, law or regulation.

(b) *Second mortgage.* If the Commissioner holds a second mortgage, it shall have a priority subordinate only to the first mortgage (and any senior liens permitted by paragraph (a) of this section).

Subpart B—Eligibility; Endorsement

§ 206.9 Eligible mortgagees.

(a) *Statutory requirements.* See sections (b)(2) and 255(d)(1) of the NHA.

(b) *HUD approved mortgagees.* Any mortgagee authorized under paragraph (a) of this section and approved under part 202 of this chapter, except an investing mortgagee approved under § 202.9 of this chapter, is eligible to apply for insurance. A mortgagee approved under §§ 202.6, 202.7, 202.9 or 202.10 of this chapter may purchase, hold and sell mortgages insured under this part without additional approval.

§ 206.13 Disclosure of available HECM program options.

At the time of initial contact, the mortgagee shall inform the prospective HECM borrower, in a manner acceptable to the Commissioner, of all products, features and options of the HECM program that FHA will insure under this part, including: Fixed interest rate mortgages with the Single Lump Sum payment option; adjustable interest rate mortgages with tenure, term, and line of credit disbursement options, or a combination of these; any other FHA insurable disbursement options; and initial mortgage insurance premium options, and how those affect the availability of other mortgage and disbursement options.

§ 206.15 Insurance.

Mortgages originated under this part must be endorsed through the Direct Endorsement program under § 203.5 of this chapter, except that any references to § 203.255 in § 203.5 shall mean § 206.115. The mortgagee shall submit the information as described in § 206.115(b) for the Direct Endorsement program; the certificate of housing counseling as described in § 206.41; a copy of the title insurance commitment satisfactory to the Commissioner (or other acceptable title evidence if the Commissioner has determined not to require title insurance under § 206.45(a)); the mortgagee's election of either the assignment or shared premium option under § 206.107; and any other documentation required by the Commissioner. If the mortgagee has complied with the requirements of §§ 203.3 and 203.5, except that any reference to § 203.255 in these sections shall mean § 206.115 for purposes of this section, and other requirements of this part, and the mortgage is determined to be eligible, the Commissioner will endorse the mortgage for insurance by issuing a Mortgage Insurance Certificate.

Eligible Mortgages

§ 206.17 Eligible Mortgages: General.

(a) [Reserved]

(b) *Interest rate and payment options.* A HECM shall provide for either fixed or adjustable interest rates in accordance with § 206.21.

(1) Fixed interest rate mortgages shall use the Single Lump Sum payment option (§ 206.19(e)).

(2) Adjustable interest rate mortgages shall initially provide for the term (§ 206.19(a)), the tenure (§ 206.19(b)), the line of credit (§ 206.19(c)), or a modified term or modified tenure (§ 206.19(d)) payment option, subject to a later change in accordance with § 206.26.

(c) *Shared appreciation.* A mortgage may provide for shared appreciation in accordance with § 206.23.

§ 206.19 Payment options.

(a) *Term payment option.* Under the term payment option, equal monthly payments are made by the mortgagee to the borrower for a fixed term of months chosen by the borrower in accordance with this section and § 206.25(e), unless the mortgage is prepaid in full or becomes due and payable earlier under § 206.27(c).

(b) *Tenure payment option.* Under the tenure payment option, equal monthly payments are made by the mortgagee to the borrower in accordance with this section and with § 206.25(f) unless the mortgage is prepaid in full or becomes due and payable under § 206.27(c).

(c) *Line of credit payment option.* Under the line of credit payment option, payments are made by the mortgagee to the borrower at times and in amounts determined by the borrower as long as the amounts do not exceed the payment amounts permitted by § 206.25.

(d) *Modified term or modified tenure payment option.* Under the modified term or modified tenure payment options, equal monthly payments are made by the mortgagee and the mortgagee shall set aside a portion of the principal limit to be drawn down as a line of credit as long as the amounts do not exceed the payment amounts permitted by § 206.25.

(e) *Single Lump Sum payment option.* Under the Single Lump Sum payment option, the Borrower's Advance will be made by the mortgagee to the borrower in an amount that does not exceed the payment amount permitted in § 206.25. The Single Lump Sum payment option will be available only for fixed interest rate HECMs. Set asides requiring disbursements after close may be offered in accordance with paragraphs (f)(1) through (3) of this section.

(f) *Principal limit set asides.* (1) *Repair Set Aside.* When repairs required by § 206.47 will be completed after closing, the mortgagee shall set aside a portion of the principal limit equal to 150 percent of the Commissioner's estimated cost of repairs, plus the repair administration fee.

(2) *Property Charge Set Aside.* (i) *Life Expectancy Set Aside (LESA).* When required by § 206.205(b)(1) or selected by the borrower under § 206.205(b)(2)(ii), the mortgagee shall set aside a portion of the principal limit, consistent with the requirements of § 206.205, for payment of the following property charges: Property taxes including special assessments levied by municipalities or state law, and flood and hazard insurance premiums.

(ii) *Borrower elects to have mortgagee pay property charges.* (A) *First year property charges.* When required by § 206.205(d), the mortgagee shall set aside a portion of the principal limit for payment of the following property charges that must be paid during the First 12-Month Disbursement Period: Property taxes including special assessments levied by municipalities or state law, and flood and hazard insurance premiums. The mortgagee's estimate of withholding amount shall be based on the best information available as to probable payments which will be required to be made for property charges in the coming year. The mortgagee may not require the withholding of amounts in excess of the current estimated total annual requirement, unless expressly requested by the borrower. Each month's withholding for property charges shall equal one-twelfth of the annual amounts as reasonably estimated by the mortgagee.

(B) *Property charges for subsequent years.* For subsequent year property charges, the mortgagee's estimate of withholding amount shall be based on the best information available as to probable payments which will be required to be made for property charges in the coming year. If actual disbursements during the preceding year are used as the basis, the resulting estimate may deviate from those disbursements by as much as ten percent. The mortgagee may not require the withholding of amounts in excess of the current estimated total annual requirement, unless expressly requested by the borrower. Each month's withholding for property charges shall equal one-twelfth of the annual amounts as reasonably estimated by the mortgagee.

(3) *Servicing Fee Set Aside.* When servicing charges will be made as permitted by § 206.207(b), the mortgagee shall set aside a portion of the principal limit sufficient to cover charges through a period equal to the payment term which would be used to calculate tenure payments under § 206.25(f).

(g) *Interest accrual and repayment.* The interest charged on the outstanding loan balance shall begin to accrue from the funding date and shall be added to the outstanding loan balance monthly as provided in the mortgage. Under all payment options, repayment of the outstanding loan balance is deferred until the mortgage becomes due and payable under § 206.27(c).

(h) *Disbursement limits.* (1) For all HECMs, no disbursements shall be made under any of the payment options, notwithstanding anything to the contrary in this section or in § 206.25, in an amount which shall cause the outstanding loan balance after the payment to exceed any maximum mortgage amount stated in the security instruments or to otherwise exceed the amount secured by a first lien.

(2) For adjustable interest rate HECMs: (i) No disbursements shall be made under any of the payment options during the First 12-Month Disbursement Period in excess of the Initial Disbursement Limit, unless otherwise permitted by the Commissioner.

(ii) If the borrower makes a partial prepayment of the outstanding loan balance during the First 12-Month Disbursement Period, the mortgagee shall apply the funds from the partial prepayment in accordance with the Note.

(3) For fixed interest rate HECMs, if the borrower makes a partial prepayment of the outstanding loan balance any time after loan closing and before the contract of insurance is terminated, the mortgagee shall apply the funds from the partial prepayment in accordance with the Note. Any increase in the available principal limit by the amount applied towards the outstanding loan balance shall not be available for the borrower to draw against.

§ 206.21 Interest rate.

(a) *Fixed interest rate.* A fixed interest rate is agreed upon by the borrower and mortgagee.

(b) *Adjustable interest rate.* An initial expected average mortgage interest rate, which defines the mortgagee's margin, is agreed upon by the borrower and mortgagee as of the date of loan closing, or as of the date of rate lock-in, if the expected average mortgage interest rate was locked-in prior to closing. The interest rate shall be adjusted in one of two ways depending on the option selected by the borrower, in accordance with paragraphs (b)(1) and (b)(2) of this section. Whenever an interest rate is adjusted, the new interest rate applies to the entire loan balance. The difference between the initial interest rate and the index figure applicable when the firm commitment is issued shall equal the margin used to determine interest rate adjustments. If the expected average mortgage interest rate is locked-in prior to closing, the difference between the expected rate and the value of the appropriate index at the time of rate lock-in shall equal the margin used to determine interest rate adjustments.

(1) *Annual adjustable interest rate HECMs.* A mortgagee offering an annual adjustable interest rate shall offer a mortgage with an interest rate cap structure that limits the periodic interest rate increases and decreases as follows:

(i) *Types of mortgages insurable.* The types of adjustable interest rate mortgages that are insurable are those for which the interest rate may be adjusted annually by the mortgagee, beginning after one year from the date of the closing.

(ii) *Interest rate index.* Changes in the interest rate charged on an adjustable interest rate mortgage must correspond either to changes in the one-year LIBOR or to changes in the weekly average yield on U.S. Treasury securities, adjusted to a constant maturity of one year. Except as otherwise provided in this section, each change in the mortgage interest rate must correspond to the upward and downward change in the index.

(iii) *Frequency of interest rate changes.* (A) The interest rate adjustments must occur annually, calculated from the date of the closing, except that the first adjustment shall be no sooner than 12 months or later than 18 months.

(B) To set the new interest rate, the mortgagee will determine the change between the initial (*i.e.,* base) index figure and the current index figure, or will add a specific margin to the current index figure. The initial index figure shall be the most recent figure available before the date of mortgage loan origination. The current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment.

(iv) *Magnitude of changes.* The adjustable interest rate mortgage initial contract interest rate shall be agreed upon by the mortgagee and the borrower. The first adjustment to the contract interest rate shall take place in accordance with the schedule set forth under paragraph (b)(1)(iii) of this section. Thereafter, for all annual adjustable interest rate mortgages, the adjustment shall be made annually and shall occur on the anniversary date of the first adjustment, subject to the following conditions and limitations:

(A) For all annual adjustable interest rate HECMs, no single adjustment to the interest rate shall result in a change in either direction of more than one percentage point from the interest rate in effect for the period immediately preceding that adjustment. Index changes in excess of one percentage point may not be carried over for inclusion in an adjustment for a subsequent year. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than five percentage points from the initial contract interest rate.

(B) At each adjustment date for annual adjustable interest rate HECMs, changes in the index interest rate, whether increases or decreases, must be translated into the adjusted mortgage interest rate, except that the mortgage may provide for minimum interest rate change limitations and for minimum increments of interest rate changes.

(2) *Monthly adjustable interest rate HECMs.* (i) If a mortgage meeting the requirements of paragraph (b)(1) of this section is offered, the mortgagee may also offer a mortgage which provides for monthly adjustments to the interest rate such that changes in the interest rate charged on an adjustable interest rate mortgage correspond either to changes in the one-year LIBOR or to changes in the weekly average yield on U.S. Treasury securities, adjusted to a constant maturity of one year (except as otherwise provided in this section, each change in the mortgage interest rate must correspond to the upward and downward change in the index), or to the one-month CMT index or one-month LIBOR index, and which sets a maximum interest rate that can be charged.

(ii) Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than five percentage points from the initial contract interest rate.

(c) *Pre-loan disclosure.* (1) At the time the mortgagee provides the borrower with a loan application, a mortgagee shall provide a borrower with a written explanation of all adjustable interest rate features of a mortgage. The explanation must include the following items:

(i) The circumstances under which the rate may increase;

(ii) Any limitations on the increase; and

(iii) The effect of an increase.

(2) Compliance with pre-loan disclosure provisions of 12 CFR part 1026 (Truth in Lending) shall constitute full compliance with paragraph (c)(1) of this section.

(d) *Post-loan disclosure.* At least 25 days before any adjustment to the interest rate may occur, the mortgagee must advise the borrower of the following:

(1) The current index amount;

(2) The date of publication of the index; and

(3) The new interest rate.

§ 206.23 Shared appreciation.

(a) *Additional interest based on net appreciated value.* Any mortgage for which the mortgagee has chosen the shared premium option (§ 206.107) may provide for shared appreciation. At the time the mortgage becomes due and payable or is paid in full, whichever occurs first, the borrower shall pay an additional amount of interest equal to a percentage of any net appreciated value of the property during the life of the mortgage. The percentage of net appreciated value to be paid to the mortgagee, referred to as the appreciation margin, shall be no more than twenty-five percent, subject to an effective interest rate cap of no more than twenty percent.

(b) *Computation of mortgagee share.* The mortgagee's share of net appreciated value is computed as follows:

(1) If the outstanding loan balance at the time the mortgagee's share of net appreciated value becomes payable is less than the appraised value of the property at the time of loan origination, the mortgagee's share is calculated by subtracting the appraised value at the time of loan origination from the adjusted sales proceeds (*i.e.,* sales proceeds less transfer costs and capital improvement costs incurred by the borrower, but excluding any liens) and multiplying by the appreciation margin.

(2) If the outstanding loan balance is greater than the appraised value at the time of loan origination but less than the adjusted proceeds, the mortgagee's share is calculated by subtracting the outstanding loan balance from the adjusted sales proceeds and multiplying by the appreciation margin.

(3) If the outstanding loan balance is greater than the adjusted sales proceeds, the net appreciated value is zero.

(4) If there has been no sale or transfer involving satisfaction of the mortgage at the time the mortgagee's share of net appreciated value becomes payable, *sales proceeds* for purposes of this section shall be the appraised value as determined in accordance with procedures approved by the Commissioner.

(c) *Effective interest rate.* To determine the effective interest rate, the amount of interest which accrued in the twelve months prior to the sale of the property or the prepayment is added to the mortgagee's share of the net appreciated value. The sum of the mortgagee's share of the net appreciated value and the interest, when divided by the sum of the outstanding loan balance at the beginning of the twelve month period prior to sale or prepayment plus the payments to or on behalf of the borrower (but not including interest) in the twelve months prior to the sale or prepayment, shall not exceed an effective interest rate of twenty percent.

(d) *Disclosure.* At the time the mortgagee provides the borrower with a loan application for a mortgage with shared appreciation, the mortgagee shall disclose to the borrower the principal limit, payments and interest rate which are applicable to a comparable mortgage offered by the mortgagee without shared appreciation.

§ 206.25 Calculation of disbursements.

(a) *Initial disbursements*— (1) *Initial Disbursement Limit—Adjustable Interest Rate HECMs:* for term, tenure, line of credit, modified term, and modified tenure payment options:

(i) The mortgagee is responsible for determining the maximum Initial Disbursement Limit.

(ii) The maximum disbursement allowed at closing and during the First 12-Month Disbursement Period is the lesser of:

(A) The greater of an amount established by the Commissioner through notice which shall not be less than 50 percent of the principal limit; or the sum of Mandatory Obligations and a percentage of the principal limit established by the Commissioner through notice which shall not be less than 10 percent; or

(B) The principal limit less the sum of the funds in the LESA for payment beyond the First 12-Month Disbursement Period and the Servicing Fee Set Aside.

(iii) The maximum amount in the First 12-Month Disbursement Period or at any point in time may not exceed the principal limit.

(iv) Mortgagees shall monitor and track all disbursements that occur at loan closing and during the First 12-Month Disbursement Period; the total amount of disbursements shall not exceed the maximum Initial Disbursement Limit, unless otherwise permitted by § 206.19(h).

(v) The borrower shall notify the mortgagee at loan closing of the exact amount of the additional percentage of the principal limit beyond Mandatory Obligations that the borrower will draw or that will remain available to be drawn during the First 12-Month Disbursement Period. The borrower may not increase or decrease this election after closing.

(2) *Borrower's Advance—Fixed Interest Rate HECMs:* For the Single Lump Sum payment option:

(i) The mortgagee is responsible for determining the maximum Borrower's Advance.

(ii) The disbursement shall only be taken at the time of closing and the maximum disbursement shall not exceed the lesser of:

(A) The greater of an amount established by the Commissioner through notice which shall not be less than 50 percent of the principal limit; or the sum of Mandatory Obligations and a percentage of the principal limit established by the Commissioner through notice which shall not be less than 10 percent; or

(B) The principal limit less the sum of the funds in the LESA for payment beyond the First 12-Month Disbursement Period and the Servicing Fee Set Aside.

(iii) The maximum amount in the First 12-Month Disbursement Period or at any point in time may not exceed the principal limit.

(iv) The borrower shall notify the mortgagee at loan closing of the exact amount of the additional percentage of the principal limit beyond Mandatory Obligations that the borrower will draw. The borrower may not increase or decrease this election after closing.

(b) *Mandatory Obligations for traditional and refinance transactions include:*

(1) Initial MIP under § 206.105(a);

(2) Loan origination fee;

(3) HECM counseling fee;

(4) Reasonable and customary amounts, but not more than the amount actually paid by the mortgagee for any of the following items:

(i) Recording fees and recording taxes, or other charges incident to the recordation of the insured mortgage;

(ii) Credit report;

(iii) Survey, if required by the mortgagee or the borrower;

(iv) Title examination;

(v) Mortgagee's title insurance;

(vi) Fees paid to an appraiser for the initial appraisal of the property; and

(vii) Flood certifications.

(5) Repair Set Asides;

(6) Repair administration fee;

(7) Delinquent Federal debt;

(8) Amounts required to discharge any existing liens on the property;

(9) Customary fees and charges for warranties, inspections, surveys, and engineer certifications;

(10) Funds to pay contractors who performed repairs as a condition of closing, in accordance with standard FHA requirements for repairs required by the appraiser;

(11) Property tax and flood and hazard insurance payments required by the mortgagee to be paid at loan closing;

(12) Property charges not included in paragraph (b)(11) of this section and which are scheduled for payment during the First 12-Month Disbursement Period, as follows:

(i) *Adjustable Interest Rate HECMs.* (A) The total amount of property charge payments scheduled for payment from the borrower authorized option under § 206.205(d) during the First 12-Month Disbursement Period;

(B) The total amount of semi-annual disbursements scheduled to be made during the First 12-Month Disbursement Period to the borrower from a Partially-Funded LESA; or

(C) The total amount of property charges scheduled for payment during the First 12-Month Disbursement Period from a Fully-Funded LESA.

(D) Mortgagees shall use the actual insurance premium and actual tax amount; if a new tax bill has not been issued, the mortgagee must use the prior year's amount multiplied by 1.04 or an amount set by the Commissioner through notice.

(ii) *Fixed Interest Rate HECMs.* (A) The total amount of property charges scheduled for payment during the First 12-Month Disbursement Period from a Fully-Funded LESA.

(B) Mortgagees shall use the actual insurance premium and actual tax amount; if a new tax bill has not been issued, the mortgagee must use the prior year's amount multiplied by 1.04 or an amount set by the Commissioner through notice; and

(13) Other charges as authorized by the Commissioner through notice.

(c) *Mandatory Obligations for HECM for Purchase transactions include:*

(1) Initial MIP under § 206.105(a);

(2) Loan origination fee;

(3) HECM counseling fee:

(4) Reasonable and customary amounts, but not more than the amount actually paid by the mortgagee for any of the following items:

(i) Recording fees and recording taxes, or other charges incident to the recordation of the insured mortgage;

(ii) Credit report;

(iii) Survey, if required by the mortgagee or the borrower;

(iv) Title examination;

(v) Mortgagee's title insurance;

(vi) Fees paid to an appraiser for the initial appraisal of the property; and

(vii) Flood certifications.

(5) Delinquent Federal debt;

(6) Fees and charges for real estate purchase contracts, warranties, inspections, surveys, and engineer certifications;

(7) The amount of the principal that is advanced towards the purchase price of the subject property;

(8) Property tax and flood and hazard insurance payments required by the mortgagee to be paid at loan closing;

(9) Property charges not included in paragraph (c)(8) of this section and which are scheduled for payment during the First 12-Month Disbursement Period, as follows:

(i) *Adjustable Interest Rate HECMs.* (A) The total amount of property charge payments scheduled for payment from the borrower authorized option under § 206.205(d) during the First 12-Month Disbursement Period;

(B) The total amount of semi-annual disbursements scheduled to be made during the First 12-Month Disbursement Period to the borrower from a Partially-Funded LESA; or

(C) The total amount of property charges scheduled for payment during the First 12-Month Disbursement Period from a Fully-Funded LESA.

(D) Mortgagees shall use the actual insurance premium and actual tax amount; if a new tax bill has not been issued, the mortgagee must use the prior year's amount multiplied by 1.04 or an amount set by the Commissioner through notice.

(ii) *Fixed Interest Rate HECMs.* (A) The total amount of property charges scheduled for payment during the First 12-Month Disbursement Period from a Fully-Funded LESA.

(B) Mortgagees shall use the actual insurance premium and actual tax amount; if a new tax bill has not been issued, the mortgagee must use the prior year's amount multiplied by 1.04 or an amount set by the Commissioner through notice; and

(10) Other charges as authorized by the Commissioner through notice.

(d) *Timing of disbursements.* Mortgage proceeds may not be disbursed until after the expiration of the 3-day rescission period under 12 CFR part 1026, if applicable.

(e) *Monthly disbursements—term option.* (1) Using factors provided by the Commissioner, the mortgagee shall calculate the monthly disbursement so that the sum of paragraphs (e)(1)(i) or (e)(1)(ii) of this section added to paragraphs (e)(1)(iii), (e)(1)(iv), and (e)(1)(v) of this section shall be equal to the principal limit at the end of the payment term.

(i) An initial disbursement under paragraph (a) of this section plus any initial servicing charge set aside under § 206.19(f)(3); or

(ii) The outstanding loan balance at the time of a change in payment option in accordance with § 206.26, plus any remaining servicing charge set aside under § 206.19(f)(3); and

(iii) The amount of the principal limit set aside in accordance with § 206.19(f) which is not included in amount set aside in paragraphs (e)(1)(i) or (e)(1)(ii) of this section;

(iv) All MIP or monthly charges due to the Commissioner in lieu of mortgage insurance premiums due through the payment term; and

(v) All interest through the remainder of the payment term. The expected average mortgage interest rate shall be used for this purpose.

(2) The mortgagee shall make all monthly disbursements through the payment term even if the outstanding loan balance exceeds the principal limit because the actual average mortgage interest rate exceeds the expected average mortgage interest rate unless the HECM becomes due and payable under § 206.27(c). In the event of a deferral of due and payable status in accordance with § 206.27(c)(3), disbursements shall cease immediately upon the death of the borrower and no further disbursements are permissible.

(3) Mortgagees shall ensure that term monthly disbursements made to the borrower during the First 12-Month Disbursement Period do not exceed the Initial Disbursement Limit. If the sum of disbursements made during the First 12-Month Disbursement Period would exceed the Initial Disbursement Limit for that time period, the mortgagee shall decrease the monthly disbursements during the First 12-Month Disbursement Period to conform with the Initial Disbursement Limit; upon conclusion of the First 12-Month Disbursement Period, the borrower may request a payment plan recalculation.

(4) If the borrower makes a partial prepayment of the outstanding loan balance during the First 12-Month Disbursement Period, the mortgagee shall apply the funds from the partial prepayment in accordance with the Note.

(5) If the mortgagee receives repayment from insurance or condemnation proceeds after restoration or repair of the damaged property, the available principal limit and outstanding loan balance shall be reduced by the amount of such payments.

(f) *Monthly disbursements—tenure option.* (1) Monthly disbursements under the tenure payment option shall be calculated as if the number of months in the payment term equals 100 minus the lesser of the age of the youngest borrower or 95, multiplied by 12, but payments shall continue until the mortgage becomes due and payable under § 206.27(c), except that in the event that payments would exceed any maximum mortgage amount stated in the security instrument or would otherwise exceed the amount secured by the first lien, in accordance with § 206.19(h) payments will cease immediately; payments may be reinstated only in the event a new Note and mortgage are executed in accordance with § 206.27(b)(10); and in the event of a deferral of due and payable status in accordance with § 206.27(c)(3) payments will cease immediately upon the death of the borrower.

(2) Mortgagees shall ensure that tenure monthly disbursements made to the borrower during the First 12-Month Disbursement Period do not exceed the Initial Disbursement Limit. If the sum of disbursements made during the First 12-Month Disbursement Period would exceed the Initial Disbursement Limit for that time period, the mortgagee shall decrease the monthly disbursements during the First 12-Month Disbursement Period to conform with the maximum Initial Disbursement Limit; upon conclusion of the First 12-Month Disbursement Period, the borrower may request a payment plan recalculation.

(3) If the borrower makes a partial prepayment of the outstanding loan balance during the First 12-Month Disbursement Period, the mortgagee shall apply the funds from the partial prepayment in accordance with the Note.

(4) If the mortgagee receives repayment from insurance or condemnation proceeds after restoration or repair of the damaged property, the available principal limit and outstanding loan balance shall be reduced by the amount of such payments.

(g) *Line of credit separately or with monthly disbursements.* If the borrower has a line of credit, separately or combined with the term or tenure payment option, the principal limit is divided into an amount set aside for servicing charges under § 206.19(f)(3), an amount equal to the line of credit (including any portion of the principal limit set aside for repairs or property charges under § 206.19(f)(1) or (2)), and the remaining amount of the principal limit (if any). The line of credit amount increases at the same rate as the total principal limit increases under § 206.3. The sum of disbursements made during the First 12-Month Disbursement Period shall not exceed the Initial Disbursement Limit. If a requested disbursement would exceed the Initial Disbursement Limit, the mortgagee may make a partial disbursement to the borrower for the amount that will not exceed the limit. Upon the conclusion of the First 12-Month Disbursement Period, the borrower may request subsequent disbursements up to the available principal limit.

(h) *Single Lump Sum payment option.* (1) Under the Single Lump Sum payment option, the Borrower's Advance shall be made by the mortgagee to the borrower in an amount that does not exceed the maximum allowable Borrower's Advance under paragraph (a)(2) of this section.

(2) If the borrower makes a partial prepayment of the outstanding loan balance any time after loan closing and before the contract of insurance is terminated, the mortgagee shall apply the funds from the partial prepayment in accordance with the Note.

(i) *Payment of MIP and interest.* At the end of each month, including the first month, interest accrued during that month shall be added to the outstanding loan balance. Where the first month is a partial month, a prorated amount of interest shall be added. Monthly MIP, which will accrue from the closing date, shall be added to the outstanding loan balance beginning with the first day of the second month after closing when paid to the Commissioner.

(j) *Mortgagee late charge.* The mortgagee shall pay a late charge to the borrower for any late disbursement. If the mortgagee does not mail or electronically transfer a scheduled monthly disbursement to the borrower on the first business day of the month or make a line of credit disbursement within 5 business days of the date the mortgagee received the request, the late charge shall be 10 percent of the entire amount that should have been paid to the borrower for that month or as a result of that request. In no event shall the total late charge exceed five hundred dollars. For each additional day that the borrower does not receive payment, the mortgagee shall pay interest at the mortgage interest rate on the late payment. Any late charge and interest shall be paid from the mortgagee's funds and shall not be added to the outstanding loan balance.

(k) *No minimum payments.* A mortgagee shall not require, as a condition of providing a loan secured by a mortgage insured under this part, that the monthly payments under the term or tenure payment option or draws under the line of credit payment option exceed a minimum amount established by the mortgagee.

§ 206.26 Change in payment option.

(a) *General.* The payment option may be changed as provided in this section.

(b) *Borrower request for payment plan change*—(1) *Adjustable Interest Rate HECMs.* (i) During the First 12-Month Disbursement Period, no payment plan change shall cause disbursements to exceed the Initial Disbursement Limit.

(ii) After the First 12-Month Disbursement Period, as long as the outstanding loan balance is less than the principal limit, a borrower may request a recalculation of the current payment option, a change from any payment option to another available payment option or a disbursement of any amount (not to exceed the difference between the principal limit and the sum of the outstanding loan balance and any set asides for repairs, servicing charges or property charges). A mortgage will continue to bear interest at an adjustable interest rate as agreed between the mortgagee and the borrower at loan origination. The mortgagee shall recalculate any future monthly payments in accordance with § 206.25.

(iii) *Fee for change in payment.* The mortgagee may charge a fee, not to exceed an amount determined by the Commissioner, whenever there is a payment plan change or whenever payments are recalculated.

(iv) *Limitations.* The Commissioner may, through notice, establish limitations on the frequency of payment plan changes, a minimum notice period that a borrower must provide in order to make a request under paragraph (b)(1)(ii) of this section, or other limitations on payment plan change requests by the borrower.

(2) *Fixed Interest Rate HECMs.* Borrowers may not request a change in payment option.

(c) *Change due to initial repairs.* When initial repairs after closing under § 206.47 are required using a Repair Set Aside, mortgagees shall comply with the following:

(1) *Adjustable Interest Rate HECMs.* (i) If repairs after closing under § 206.47 are completed without using all of the funds set aside for repairs, the mortgagee shall transfer the remaining amount to a line of credit, modified term or modified tenure payment option and inform the borrower of the sum available to be drawn.

(ii) If repairs after closing under § 206.47 cannot be completed with the funds set aside for repairs, the mortgagee may advance additional funds to complete repairs from an existing line of credit. If a line of credit is not sufficient to make the advance or if no line of credit exists, future monthly disbursements shall be recalculated for use as a line of credit in accordance with § 206.25.

(iii) If repairs are not completed when required by the mortgage, the mortgagee shall stop monthly payments and the mortgage shall convert to the line of credit payment option. Until the repairs are completed, the mortgagee shall make no line of credit disbursements except as needed to pay for repairs required by the mortgage.

(2) *Fixed Interest Rate HECMs.* No unused set aside funds shall be made available to the borrower, except that a borrower may be reimbursed for the cost of repair materials (not including labor), in accordance with § 206.47, under conditions established by the Commissioner.

§ 206.27 Mortgage provisions.

(a) *Form.* The mortgage shall be in a form meeting the requirements of the Commissioner.

(b) *Provisions.* The terms of the mortgage shall contain an explanation of how payments will be made to the borrower, how interest will be charged and when the mortgage will be due and payable. The mortgage shall include a provision deferring the due and payable status that occurs because of the death of the last surviving borrower for an Eligible Non-Borrowing Spouse. It shall also contain provisions designed to ensure compliance with this part and provisions on the following additional matters:

(1) Disbursements by the mortgagee under the term or tenure payment options shall be mailed to the borrower or electronically transferred to an account of the borrower on the first business day of each month beginning with the first month after closing. Disbursements under the line of credit payment option shall be mailed to the borrower or electronically transferred to an account of the borrower within five business days after the mortgagee has received a written request for disbursement by the borrower. In accordance with § 206.55, in no event may disbursements continue during a Deferral Period.

(2) The borrower shall insure all improvements on the property that serves as collateral for the HECM whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including but not limited to fire and flood, for which the mortgagee requires insurance. Such insurance shall be maintained in the amount and for the period of time that is necessary to protect the mortgagee's investment. Whether or not the mortgagee imposes a flood insurance requirement, the borrower shall at a minimum insure all improvements on the property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Commissioner. If the mortgagee imposes insurance requirements, all insurance shall be carried with companies acceptable to the mortgagee, and the insurance policies and any renewals shall be held by the mortgagee and shall include loss payable clauses in favor of and in a form acceptable to the mortgagee.

(3) The borrower shall not participate in a real estate tax deferral program or permit any liens to be recorded against the property, unless such liens are subordinate to the insured mortgage and, if applicable, any second mortgage held by the Commissioner.

(4) A mortgage may be prepaid in full or in part in accordance with § 206.209.

(5) The borrower must keep the property in good repair.

(6) The borrower must provide for the payment of property charges in accordance with § 206.205.

(7) The payment of monthly MIP may be added to the outstanding principal balance.

(8) The borrower shall have no personal liability for payment of the outstanding loan balance. The mortgagee shall enforce the debt only through sale of the property. The mortgagee shall not be permitted to obtain a deficiency judgment against the borrower if the mortgage is foreclosed.

(9) If the mortgage is assigned to the Commissioner under § 206.121(b), the borrower shall not be liable for any difference between the insurance benefits paid to the mortgagee and the outstanding loan balance including accrued interest, owed by the borrower at the time of the assignment.

(10) If State law limits the first lien status of the mortgage as originally executed and recorded to a maximum amount of debt or a maximum number of years, the borrower shall agree to execute any additional documents required by the mortgagee and approved by the Commissioner to extend the first lien status to an additional amount of debt and an additional number of years and to cause any other liens to be removed or subordinated.

(c) *Date the mortgage comes due and payable.* (1) The mortgage shall state that the outstanding loan balance will be due and payable in full if a borrower dies and the property is not the principal residence of at least one surviving borrower, except that the due and payable status shall be deferred in accordance with paragraph (c)(3) of this section if the requirements of the Deferral Period are met; or if a borrower conveys all of his or her title in the property and no other borrower retains title to the property. For purposes of the preceding sentence, a borrower retains title in the property if the borrower continues to hold title to any part of the property in fee simple, as a leasehold interest as set forth in § 206.45(a), or as a life estate.

(2) The mortgage shall state that the outstanding loan balance shall be due and payable in full, upon approval of the Commissioner, if any of the following occur:

(i) The property ceases to be the principal residence of a borrower for reasons other than death and the property is not the principal residence of at least one other borrower;

(ii) For a period of longer than 12 consecutive months, a borrower fails to occupy the property because of physical or mental illness and the property is not the principal residence of at least one other borrower;

(iii) The borrower does not provide for the payment of property charges in accordance with § 206.205; or

(iv) An obligation of the borrower under the mortgage is not performed.

(3) *Deferral of due and payable status.* The mortgage documents shall contain a provision deferring due and payable status, called the Deferral Period, for an Eligible Non-Borrowing Spouse until the death of the last Eligible Non-Borrowing Spouse or the requirements of the Deferral Period in § 206.55 cease to be met and have not been cured as provided for in § 206.57.

(d) *Second mortgage to Commissioner.* Unless otherwise provided by the Commissioner, a second mortgage to secure any payments by the Commissioner as provided in § 206.121(c) must be given to the Commissioner before a Mortgage Insurance Certificate is issued for the mortgage. If the Commissioner does not require a second mortgage to be given to the Commissioner prior to the issuance of a Mortgage Insurance Certificate, the Commissioner may require a second mortgage to be given to the Commissioner at a later day in order to secure payments by the Commissioner as provided in § 206.121(c).

§ 206.31 Allowable charges and fees.

(a) *Fees at closing.* The mortgagee may collect, either in cash at the time of closing or through an initial payment under the mortgage, the following charges and fees incurred in connection with the origination, processing and closing of the mortgage loan:

(1) *Loan Origination Fee.* Mortgagees may charge a loan origination fee and may use such fee to pay for services performed by a sponsored third-party originator. The loan origination fee limit shall be the greater of $2,500 or two percent of the maximum claim amount of $200,000, plus one percent of any portion of the maximum claim amount that is greater than $200,000. Mortgagees may accept a lower origination fee. Mortgagees may pay fees for services performed by a sponsored third-party originator and these fees may be included as part of the loan origination fee. The total amount of the loan origination fee may not exceed $6,000, except that the Commissioner may through notice adjust the maximum limit in accordance with the annual percentage increase in the Consumer Price Index of the Bureau of Labor Statistics of the Department of Labor in increments of $500 only when the percentage increase in such index, when applied to the maximum origination fee, produces dollar increases that exceed $500. The loan origination fee may be fully financed with the mortgage.

(2) *Reasonable and customary amounts.* Reasonable and customary amounts, but not more than the amount actually paid by the mortgagee, for any of the following items:

(i) Recording fees and recording taxes, or other charges incident to the recordation of the insured mortgage;

(ii) Credit report;

(iii) Survey, if required by the mortgagee or the borrower;

(iv) Title examination;

(v) Mortgagee's title insurance;

(vi) Fees paid to an appraiser for the initial appraisal of the property;

(vii) Flood certifications; and

(viii) Such other charges as may be authorized by the Commissioner.

(b) *Repair administration fee.* If the property requires repairs after closing in order to meet FHA requirements, the mortgagee may collect a fee for each occurrence as compensation for administrative duties relating to repair work pursuant to § 206.47(c) and (d), not to exceed the greater of one and one-half percent of the amount advanced for the repairs or fifty dollars. The mortgagee shall collect the repair fee by adding it to the outstanding loan balance.

§ 206.32 No outstanding unpaid obligations.

In order for a mortgage to be eligible under this part, a borrower must establish to the satisfaction of the mortgagee that after the initial payment of loan proceeds under § 206.25(a), there will be no outstanding or unpaid obligations incurred by the borrower in connection with the mortgage transaction, except for mortgage servicing charges permitted under § 206.207(b) and any future Repair Set Aside established pursuant to § 206.19(f)(1)(ii); and the initial disbursement will not be used for any payment to or on behalf of an estate planning service firm.

Eligible Borrowers

§ 206.33 Age of borrower.

The youngest borrower shall be 62 years of age or older at the time of loan closing.

§ 206.34 Limitation on number of mortgages.

(a) Once a borrower has obtained an insured mortgage under this part, the borrower is eligible to obtain future insured HECM loan financing if the existing HECM is satisfied prior to or at the closing of the new HECM, or as part of divorce or annulment of a marriage the ex-spouse, who had previously jointly obtained a HECM with their ex-spouse, presents a final divorce decree awarding all financial obligation of the prior HECM to the other ex-spouse, and has relinquished title as evidenced by a recorded deed.

(b) Current HECM borrowers that plan to sell their existing residence and use the HECM for Purchase program to obtain a new principal residence must pay off the existing FHA-insured mortgage before the HECM for Purchase mortgage can be insured.

§ 206.35 Title of property which is security for HECM.

(a) A mortgagor is not required to be a borrower; however, any borrower is required to be on title to the property which serves as collateral for the HECM, and is therefore, by definition, also a mortgagor.

(b) The mortgagor shall hold title to the entire property which is the security for the mortgage. If there are multiple mortgagors, all the mortgagors must collectively hold title to the entire property which is the security for the mortgage. If one or more mortgagors hold a life estate in the property, for purposes of this section only, the term "mortgagor" shall include each holder of a future interest in the property (remainder or reversion) who has executed the mortgage.

(c) If Non-Borrowing Spouses and non-borrowing owners of the property will continue to hold title to the property which serves as collateral for the HECM, such Non-Borrowing Spouses and non-borrowing owners must sign the mortgage as mortgagors, evidencing their commitment of the property as security for the mortgage.

(d) All Non-Borrowing Spouses and non-borrowing owners shall sign a certification that:

(1) Consents to their spouse or other borrowing owner obtaining the HECM;

(2) Acknowledges the terms and conditions of the mortgage; and

(3) Acknowledges that the property will serve as collateral for the HECM as evidenced by mortgage lien(s).

§ 206.36 Seasoning requirements for existing non-HECM liens.

(a) The Commissioner may establish, through notice, seasoning requirements for existing non-HECM liens. Such seasoning requirements shall not prohibit the payoff of existing non-HECM liens using HECM proceeds if the liens have been in place for longer than 12 months or if the liens have resulted in cash to the borrower in an amount of $500 or less, whether at closing or through cumulative draws prior to the date of the initial HECM loan application.

(b) Mortgagees must provide documentation satisfactory to the Commissioner as established by notice that the seasoning requirement was met.

§ 206.37 Credit standing.

(a) Each borrower shall have a general credit standing satisfactory to the Commissioner.

(b) *Required Financial Assessment*—(1) *Requirement for Financial Assessment prior to loan approval.* Prior to loan approval, the mortgagee shall assess the financial capacity of the borrower to comply with the terms of the mortgage and evaluate whether the HECM is a sustainable solution for the borrower, in accordance with instructions established by the Commissioner through notice. The Financial Assessment shall consider the borrower's credit history, cash flow and residual income, extenuating circumstances, and compensating factors.

(i) *Credit history.* In accordance with FHA guidelines in existence at the time of FHA Case Number assignment, mortgagees shall conduct an in-depth credit history analysis to determine if the borrower has demonstrated the willingness to meet his or her financial obligations.

(ii) *Cash flow and residual income analysis.* In accordance with FHA guidelines in existence at the time of FHA Case Number assignment, mortgagees shall conduct a cash flow and residual income analysis to determine the capacity of the borrower to meet his or her documented financial obligations with his or her documented income.

(iii) *Extenuating circumstances.* Where the borrower's credit history does not meet the criteria set by the mortgagee based on FHA guidelines in existence at the time of FHA Case Number assignment, mortgagees shall consider and document, as part of the Financial Assessment, extenuating circumstances that led to the credit issues.

(iv) *Compensating factors.* The mortgagee shall document and identify in the Financial Assessment any considered compensating factors.

(2) *Completion and approval of Financial Assessment.* The Financial Assessment shall be completed and approved by a DE Underwriter registered in HUD's system of record by the underwriting mortgagee.

(3) *Nondiscrimination.* (i) The Financial Assessment shall be conducted in a uniform manner that shall not discriminate because of race, color, religion, sex, national origin, familial status, disability, marital status, actual or perceived sexual orientation, gender identity, source of income of the borrower, location of the property, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*).

(ii) The Financial Assessment shall be conducted in compliance with all applicable laws and regulations, including but not limited to, the following:

(A) Fair Housing Act (42 U.S.C. 3601 *et seq.*);

(B) Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*);

(C) Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*); and

(D) 12 CFR part 1002.

§ 206.39 Principal residence.

(a) The property must be the principal residence of each borrower, and if applicable, Eligible Non-Borrowing Spouse, at closing.

(b) *HECM for Purchase.* For HECM for Purchase transactions, each borrower, and if applicable, Eligible Non-Borrowing Spouse, must occupy the property within 60 days from the date of closing.

§ 206.40 Disclosure, verification and certifications.

(a) *Disclosure and certification of Social Security and Employer Identification Numbers.*

(1) *Borrower.* The borrower must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(2) *Eligible Non-Borrowing Spouse.* The Eligible Non-Borrowing Spouse shall comply with the requirements for disclosure and verification of Social Security and Employer Identification Numbers by borrowers in paragraph (a)(1) of this section.

(b) *Certifications.* Each borrower and each Non-Borrowing Spouse shall provide all required certifications to HUD and the mortgagee, as required by the Commissioner.

(c) *Designation of agent.* At the time of origination, the Commissioner may require a borrower to designate an agent or other party to act on his behalf when FHA is unable to make contact or to communicate with the borrower. If such designation is not required by the Commissioner, and at any time, the borrower may voluntarily designate such agent or other person to act on his behalf.

§ 206.41 Counseling.

(a) *List provided.* At the time of the initial contact with the prospective borrower, the mortgagee shall give the borrower a list of the names, addresses, and telephone numbers of HECM counselors and their employing agencies, which have been approved by the Commissioner, in accordance with subpart E of this part, as qualified and able to provide the information described in paragraph (b) of this section. The borrower, any Eligible or Ineligible Non-Borrowing Spouse and any non-borrowing owner must receive counseling.

(b) *Information to be provided.* (1) A HECM counselor must discuss with the borrower:

(i) The information required by subsection 255(f) of the NHA;

(ii) Whether the borrower has signed a contract or agreement with an estate planning service firm that requires, or purports to require, the borrower to pay a fee on or after closing that may exceed amounts permitted by the Commissioner or this part;

(iii) If such a contract has been signed under paragraph (b)(1)(ii) of this section, the extent to which services under the contract may not be needed or may be available at nominal or no cost from other sources, including the mortgagee; and

(iv) Any other requirements determined by the Commissioner.

(2) If the HECM borrower has an Eligible Non-Borrowing Spouse, in addition to meeting the requirements of paragraph (b)(1) of this section, a HECM

counselor shall discuss with the borrower and Eligible Non-Borrowing Spouse:

(i) The requirement that the Eligible Non-Borrowing Spouse must obtain ownership of the property or other legal right to remain in the property for life, upon the death of the last surviving borrower;

(ii) A failure to obtain ownership or other legal right to remain in the property for life will result in the HECM becoming due and payable and the Eligible Non-Borrowing Spouse will not receive the benefit of the Deferral Period;

(iii) The requirement that the property must be the principal residence of the Eligible Non-Borrowing Spouse prior to and after the death of the borrowing spouse;

(iv) The requirement that the Eligible Non-Borrowing Spouse fulfills all obligations of the mortgage, including the payment of property charges and upkeep of the property; and

(v) Any other requirements determined by the Commissioner.

(3) If the HECM borrower has an Ineligible Non-Borrowing Spouse, in addition to meeting the requirements of paragraph (b)(1) of this section, a HECM counselor shall discuss with the borrower and Ineligible Non-Borrowing Spouse:

(i) The Deferral Period will not be applicable;

(ii) The HECM will become due and payable upon the death of the last surviving borrower; and

(iii) Any other requirements determined by the Commissioner.

(c) *Certificate.* The HECM counselor will provide the borrower with a certificate stating that the borrower, Non-Borrowing Spouse and non-borrowing owner, as applicable, has received counseling. The HECM counselor shall upload the certificate to the appropriate electronic database.

(d) *HECM for Purchase.* For HECM for Purchase transactions, prospective borrowers shall complete the required HECM counseling prior to signing a sales contract and/or making an earnest money deposit, unless a later date is provided for by the Commissioner.

§ 206.43 Information to borrower.

(a) *Disclosure of costs of obtaining mortgage.* The mortgagee shall ensure that the borrower has received full disclosure of all costs of obtaining the mortgage. The mortgagee shall ask the borrower about any costs or other obligations that the borrower has incurred to obtain the mortgage, as defined by the Commissioner, in addition to providing the Good Faith Estimate required by 12 CFR 1024.7. The mortgagee shall clearly state to the borrower which charges are required to obtain the mortgage and which are not required to obtain the mortgage.

(b) *Lump sum disbursement.* (1) If the borrower requests that at least 25 percent of the principal limit amount (after deducting amounts excluded in the following sentence) be disbursed at closing to the borrower (or as otherwise permitted by § 206.25), the mortgagee must make sufficient inquiry at closing to confirm that the borrower will not use any part of the amount disbursed for payments to or on behalf of an estate planning service firm, with an explanation of § 206.32 as necessary or appropriate.

(2) This paragraph does not apply to any part of the principal limit used for the following:

(i) Initial MIP under § 206.105(a) or fees and charges allowed under § 206.31(a) paid by the mortgagee from mortgage proceeds instead of by the borrower in cash; and

(ii) Amounts set aside in accordance with § 206.19(f) for repairs under § 206.47, for property charges under § 206.205, or for servicing charges under § 206.207(b).

§ 206.44 Monetary investment for HECM for Purchase program.

(a) *Monetary investment.* At closing, HECM for Purchase borrowers shall provide a monetary investment that will be applied to satisfy the difference between the principal limit and the sale price for the property, plus any HECM loan-related fees that are not financed into the loan, minus the amount of the earnest deposit.

(b) *Funding sources.* To satisfy the required monetary investment, borrowers may use:

(1) Cash on hand;

(2) Cash from the sale or liquidation of the borrower's assets;

(3) HECM mortgage proceeds; or

(4) Other approved funding sources as determined by the Commissioner through notice.

(c) *Interested party contributions.* (1) The following interested party contributions are permissible:

(i) Fees required to be paid by a seller under state or local law; and

(ii) The purchase of the Home Warranty policy by the seller.

(2) The Commissioner may define additional permissible interested party contributions and impose requirements for permissible interested party contributions through a notice for comment published in the **Federal Register**.

Eligible Properties

§ 206.45 Eligible properties.

(a) *Title.* A mortgage must be on real estate held in fee simple; or on a leasehold that is under a lease with a duration lasting until the later of: 99 years, if such lease is renewable; or the actuarial life expectancy of the mortgagor plus a number of years specified by the Commissioner, which shall not be more than 99 years. The mortgagee shall obtain a title insurance policy satisfactory to the Commissioner. If the Commissioner determines that title insurance for reverse mortgages is not available for reasonable rates in a state, then the Commissioner may specify other acceptable forms of title evidence in lieu of title insurance.

(b) *Type of property.* The property shall include a dwelling designed principally as a residence for one family or such additional families as the Commissioner shall determine. A condominium unit designed for one-family occupancy shall also be an eligible property.

(c) *Borrower and mortgagee requirement for maintaining flood insurance coverage.* (1) If the mortgage is to cover property improvements (dwelling and related structures or equipment essential to the value of the property and subject to flood damage) that:

(i) Are located in an area designated by the Federal Emergency Management Agency (FEMA) as a floodplain area having special flood hazards; or

(ii) Are otherwise determined by the Commissioner to be subject to a flood hazard, and if flood insurance under the National Flood Insurance Program (NFIP) is available with respect to these property improvements, the borrower and mortgagee shall be obligated, by a special condition to be included in the mortgage commitment, to obtain and to maintain NFIP flood insurance coverage on the property improvements during such time as the mortgage is insured.

(2) No mortgage may be insured that covers property improvements located in an area that has been identified by FEMA as an area having special flood hazards, unless the community in which the area is situated is participating in the NFIP and such insurance is obtained by the borrower. Such requirement for flood insurance shall be effective one year after the date of notification by FEMA to the chief executive officer of a flood prone community that such community has been identified as having special flood hazards.

(3) The flood insurance must be maintained during such time as the

mortgage is insured in an amount at least equal to the lowest of the following:

(i) 100 percent replacement cost of the insurable value of the improvements, which consists of the development or project cost less estimated land cost; or

(ii) The maximum amount of the NFIP insurance available with respect to the particular type of the property; or

(iii) The outstanding principal balance of the loan.

(d) *Lead-based paint poisoning prevention.* If the appraiser of a dwelling constructed prior to 1978 finds defective paint surfaces, 24 CFR 200.810(d) shall apply unless the borrower certifies that no child who is less than six years of age resides or is expected to reside in the dwelling, except that any reference to "mortgagor" in 24 CFR 200.810(d) shall mean "borrower" for purposes of this paragraph.

(e) *Restrictions on conveyance.* The property must be freely marketable. Conveyance of the property may only be restricted as permitted under this section, except that a right of first refusal to purchase a unit in a condominium project is permitted if the right is held by the condominium association for the project.

(1) As used in this section, *legal restrictions on conveyance* means any provision in any legal instrument, law or regulation applicable to the borrower or the mortgaged property, including but not limited to a lease, deed, sales contract, declaration of covenants, declaration of condominium, option, right of first refusal, will, or trust agreement, that attempts to cause a conveyance (including a lease) made by the borrower to:

(i) Be void or voidable by a third party;

(ii) Be the basis of contractual liability of the borrower for breach of an agreement not to convey, including rights of first refusal, pre-emptive rights or options related to borrower efforts to convey;

(iii) Terminate or subject to termination all or a part of the interest held by the borrower in the mortgaged property if a conveyance is attempted;

(iv) Be subject to the consent of a third party;

(v) Be subject to limits on the amount of sales proceeds retainable by the seller; or

(vi) Be grounds for acceleration of the insured mortgage or increase in the interest rate.

(2) *Policy of free assumability with no restrictions.* A HECM shall not be eligible for insurance if the property securing the HECM is subject to legal restrictions on conveyance, except as permitted by this section.

(3) *Exception for protective covenants excluding non-elderly.* Mortgaged property may be subject to protective covenants which prohibit or restrict occupancy by, or transfer to, persons who are not elderly if:

(i) The restrictions do not have an undue effect on marketability; and

(ii) The restrictions do not constitute illegal discrimination and are consistent with the Fair Housing Act and all other applicable nondiscrimination laws.

(4) *Exceptions for specific jurisdictions.* Notwithstanding the provisions of paragraph (e)(2) of this section, mortgages insured on property in the Northern Mariana Islands or American Samoa shall not be ineligible for insurance under this section solely because applicable law does not permit free alienability of title to all persons.

(f) *Location of property.* The mortgaged property shall be located within the United States, Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and American Samoa. The mortgaged property, if otherwise acceptable to the Commissioner, may be located in any location where the housing standards meet the requirements of the Commissioner.

(g) *HECM for Purchase.* (1) A HECM for Purchase transaction is where title to the property is transferred to the HECM borrower and, at the time of closing, the HECM first and second liens, if applicable, will be the only liens against the property.

(2) Properties are eligible for FHA insurance under the HECM for Purchase program when construction is completed and the property is habitable, as evidenced by the issuance of a Certificate of Occupancy or its equivalent, by the local jurisdiction.

§ 206.47 Property standards; repair work.

(a) *Need for repairs.* Properties must meet the applicable property requirements of the Commissioner in order to be eligible. Properties that do not meet the property requirements must be repaired in order to ensure that the repaired property will serve as adequate security for the insured mortgage.

(b) *Assurance that repairs are made.* The mortgage may be closed before the repair work is completed if the Commissioner estimates that the cost of the remaining repair work will not exceed 15 percent of the maximum claim amount and the mortgage contains provisions approved by the Commissioner concerning payment for the repairs.

(c) *Reimbursement to contractor.* When repair work is completed after closing by a contractor, the mortgagee shall cause one or more inspections of the property to be made by an inspector or other qualified individual acceptable to the Commissioner in order to ensure that the repair work is satisfactory, and prior to the release of funds from the Repair Set Aside. The mortgagee shall hold back a portion of the contract price attributable to the work done before each interim release of funds, and the total of the hold backs will be released after the final inspection and approval of the release by the mortgagee. The mortgagee shall ensure that all mechanics' and materialmen's liens are released of record.

(d) *Reimbursement to borrower.* The mortgagee shall not reimburse the borrower for any labor the borrower performed. The mortgagee may reimburse the borrower for the actual cost of repair materials from the Repair Set Aside, provided that the mortgagee causes one or more inspections of the property by an inspector or other qualified individual acceptable to the Commissioner and meets all reimbursement requirements established by the Commissioner.

(e) *HECM for Purchase.* For HECM for Purchase transactions, where major property deficiencies threaten the health and safety of the homeowner or jeopardize the soundness and security of the property, all repairs must be completed by the seller prior to closing. Appraisers shall complete the appraisal report as "Subject To" the completion of the repairs.

§ 206.51 Eligibility of mortgages involving a dwelling unit in a condominium.

If the mortgage involves a dwelling unit in a condominium, the project in which the unit is located shall have been committed to a plan of condominium ownership by deed, or other recorded instrument, that is acceptable to the Commissioner.

§ 206.52 Eligible sale of property–HECM for Purchase.

(a) *Sale by owner of record*— (1) *Owner of record requirement.* To be eligible for a mortgage insured by FHA, the property must be purchased from the owner of record and the transaction may not involve any sale or assignment of the sales contract.

(2) *Supporting documentation.* The mortgagee shall obtain documentation verifying that the seller is the owner of record and must submit this documentation to FHA as part of the application for mortgage insurance, in

accordance with §§ 206.15 and 206.115(b)(9).

(b) *Time restrictions on re-sales.* (1) *General.* The eligibility of a property for a mortgage insured by FHA is dependent on the time that has elapsed between the date the seller acquired the property (based upon the date of settlement) and the date of execution of the sales contract that will result in the FHA mortgage insurance (the re-sale date). The mortgagee shall obtain documentation verifying compliance with the time restrictions described in this paragraph and must submit this documentation to FHA as part of the application for mortgage insurance, in accordance with § 206.115(b).

(2) *Re-sales occurring 90 days or less following acquisition.* If the re-sale date is 90 days or less following the date of acquisition by the seller, the property is not eligible for a mortgage to be insured by FHA.

(3) *Re-sales occurring between 91 days and 180 days following acquisition.* (i) If the re-sale date is between 91 days and 180 days following acquisition by the seller, the property is generally eligible for a mortgage insured by FHA.

(ii) However, FHA will require that the mortgagee obtain additional documentation if the re-sale price is 100 percent over the purchase price. Such documentation must include an appraisal from another appraiser. The mortgagee may also document its loan file to support the increased value by establishing that the increased value results from the rehabilitation of the property.

(iii) FHA may revise the level at which additional documentation is required under paragraph (b)(3) of this section at 50 to 150 percent over the original purchase price. FHA will revise this level by **Federal Register** notice with a 30 day delayed effective date.

(4) *Authority to address property flipping for re-sales occurring between 91 days and 12 months following acquisition.* (i) If the re-sale date is more than 90 days after the date of acquisition by the seller, but before the end of the twelfth month after the date of acquisition, the property is eligible for a mortgage to be insured by FHA.

(ii) However, FHA may require that the mortgagee provide additional documentation to support the re-sale value of the property if the re-sale price is 5 percent or greater than the lowest sales price of the property during the preceding 12 months (as evidenced by the contract of sale). At FHA's discretion, such documentation must include, but is not limited to, an appraisal from another appraiser. FHA may exclude re-sales of less than a specific dollar amount from the additional value documentation requirements.

(iii) If the additional value documentation supports a value of the property that is more than 5 percent lower than the value supported by the first appraisal, the lower value will be used to calculate the maximum claim amount. Otherwise, the value supported by the first appraisal will be used to calculate the maximum claim amount.

(iv) FHA will announce its determination to require additional value documentation through issuance of a **Federal Register** notice. The requirement for additional value documentation may be established either on a nationwide or regional basis. Further, the **Federal Register** notice will specify the percentage increase in the re-sale price that will trigger the need for additional documentation, and will specify the acceptable types of documentation. The **Federal Register** notice may also exclude re-sales of less than a specific dollar amount from the additional value documentation requirements. Any such **Federal Register** notice, and any subsequent revisions, will be issued at least thirty days before taking effect.

(v) The level at which additional documentation is required under paragraph (b)(4) of this section shall supersede that under paragraph (b)(3) of this section.

(5) *Re-sales occurring more than 12 months following acquisition.* If the re-sale date is more than 12 months following the date of acquisition by the seller, the property is eligible for a mortgage insured by FHA.

(c) *Exceptions to the time restrictions on sales.* The time restrictions on sales described in paragraph (b) of this section do not apply to:

(1) Sales by HUD of Real Estate-Owned (REO) properties under 24 CFR part 291 and of single family assets in revitalization areas pursuant to section 204 of the NHA (12 U.S.C. 1710);

(2) Sales by another agency of the United States Government of REO single family properties pursuant to programs operated by these agencies;

(3) Sales of properties by nonprofit organizations approved to purchase HUD REO single family properties at a discount with resale restrictions;

(4) Sales of properties that were acquired by the sellers by inheritance;

(5) Sales of properties purchased by an employer or relocation agency in connection with the relocation of an employee;

(6) Sales of properties by state- and federally-chartered financial institutions and government-sponsored enterprises (GSEs);

(7) Sales of properties by local and state government agencies; and

(8) Only upon announcement by FHA through issuance of a notice, sales of properties located in areas designated by the President as federal disaster areas. The notice will specify how long the exception will be in effect.

(d) *Sanctions and indemnification.* Failure of a mortgagee to comply with the requirements of this section may result in HUD requesting indemnification of the mortgage loan, or seeking other appropriate remedies under 24 CFR part 25.

Refinancing of Existing Home Equity Conversion Mortgages

§ 206.53 Refinancing a HECM loan.

(a) *General.* Except as otherwise provided in this section, all requirements applicable to the insurance of HECMs under this part apply to the insurance of refinanced HECMs. FHA may, upon application by a mortgagee, insure any mortgage given to refinance an existing HECM insured under this part, including loans assigned to the Commissioner as described in § 206.107(a)(1) and § 206.121(b) of this part.

(b) *Definition of "total cost of the refinancing".* For purposes of paragraphs (d) and (e) of this section, the term "total cost of the refinancing" means the sum of the allowable charges and fees permitted under § 206.31 and the initial MIP described in § 206.105(a) and paragraph (c) of this section.

(c) *Initial MIP limit.* (1) The initial MIP paid by the mortgagee pursuant to § 206.105(a) shall not exceed the difference between: Three percent of the increase in the maximum claim amount for the new HECM, minus the amount of the initial MIP already charged and paid by the borrower for the existing HECM that is being refinanced. No refunds will be given if the initial MIP paid on the existing HECM exceeds the initial MIP due on the new HECM.

(2) The HECM refinance authority is only applicable when the property that serves as collateral for the FHA-insured mortgage remains the same.

(3) Existing HECM borrowers refinancing an existing HECM are eligible for a MIP reduction under the conditions of this section, but existing HECM borrowers who participate in a HECM for Purchase transaction are ineligible for a reduction in the initial MIP.

(d) *Anti-churning disclosure*— (1) *Contents of anti-churning disclosure.* In addition to providing the required disclosures under § 206.43, the mortgagee shall provide to the borrower its best estimate of:

(i) The total cost of the refinancing to the borrower; and

(ii) The increase in the borrower's principal limit as measured by the estimated initial principal limit on the mortgage to be insured less the current principal limit on the HECM that is being refinanced under this section.

(2) *Timing of anti-churning disclosure.* The mortgagee shall provide the anti-churning disclosure concurrently with the disclosures required under § 206.43.

(e) *Waiver of counseling requirement.* The borrower and any Non-Borrowing Spouse may elect not to receive counseling under § 206.41, but only if:

(1) The original HECM was assigned a Case Number on or after August 4, 2014, and the borrower and Non-Borrowing Spouse, if applicable, received counseling required under § 206.41; or where the original HECM was assigned a Case Number prior to August 4, 2014, and there is no applicable Non-Borrowing Spouse.

(2) The borrower has received the anti-churning disclosure required under paragraph (d) of this section.

(3) The increase in the borrower's principal limit (as provided in the anti-churning disclosure) exceeds the total cost of the refinancing by an amount established by the Commissioner through **Federal Register** notice. FHA may periodically update this amount through publication of a notice in the **Federal Register**. Publication of any such revised amount will occur at least 30 days before the revision becomes effective.

(4) The time between the date of the closing on the original HECM and the date of the application for refinancing under this section does not exceed five years (even if less than five years have passed since a previous refinancing under this section).

Deferral of Due and Payable Status

§ 206.55 Deferral of due and payable status for Eligible Non-Borrowing Spouses.

(a) *Deferral Period.* If the last surviving borrower predeceases an Eligible Non-Borrowing Spouse, and if the requirements of paragraph (d) of this section are satisfied, the due and payable status will be deferred for as long as the Eligible Non-Borrowing Spouse continues to meet the Qualifying Attributes in paragraph (c) of this section and the requirements of paragraphs (d) and (e).

(b) *End of Deferral Period.* (1) If a Deferral Period ceases or becomes unavailable because a Non-Borrowing Spouse no longer satisfies the Qualifying Attributes and has become an Ineligible Non-Borrowing Spouse, a mortgagee may not provide an opportunity to cure the default, and the HECM will become immediately due and payable as a result of the death of the last surviving borrower.

(2) If a Deferral Period ceases but the Eligible Non-Borrowing Spouse continues to meet the Qualifying Attributes, the mortgagee must provide an Eligible Non-Borrowing Spouse with 30 days to cure the default, in accordance with § 206.57.

(c) *Qualifying Attributes.* (1) In order to qualify as an Eligible Non-Borrowing Spouse, the Non-Borrowing Spouse must:

(i) Have been the spouse of a HECM borrower at the time of loan closing and remained the spouse of such HECM borrower for the duration of the HECM borrower's lifetime;

(ii) Have been properly disclosed to the mortgagee at origination and specifically named as an Eligible Non-Borrowing Spouse in the HECM mortgage and loan documents;

(iii) Have occupied, and continue to occupy, the property securing the HECM as his or her principal residence; and

(iv) Meet any other requirements as the Commissioner may prescribe by **Federal Register** notice for comment.

(2) A Non-Borrowing Spouse who meets the Qualifying Attributes in paragraph (c)(1) of this section at origination is an Eligible Non-Borrowing Spouse and may not elect to be ineligible for the Deferral Period. A Non-Borrowing Spouse that is ineligible for the Deferral Period at the time of loan origination because he or she failed to satisfy the Qualifying Attributes requirements in paragraph (c)(1) of this section is not subsequently eligible for a Deferral Period when the borrowing spouse dies or moves out of the home.

(3) An Eligible Non-Borrowing Spouse shall become an Ineligible Non-Borrowing Spouse should any of the Qualifying Attributes requirements in paragraph (c)(1) of this section cease to be met.

(d) *Additional requirements for Deferral Period.* An Eligible Non-Borrowing Spouse must satisfy and continue to satisfy the following requirements:

(1) Within 90 days from the death of the last surviving HECM borrower, establish legal ownership or other ongoing legal right to remain for life in the property securing the HECM;

(2) After the death of the last surviving borrower, ensure all other obligations of the HECM borrower(s) contained in the loan documents continue to be satisfied; and

(3) After the death of the last surviving borrower, ensure that the HECM does not become eligible to be called due and payable for any other reason.

(e) *Unaffected terms of HECM.* All applicable terms and conditions of the mortgage and loan documents, and all FHA requirements, continue to apply and must be satisfied.

(f) Nothing in this section may be construed as interrupting or interfering with the ability of the borrower's estate or heir(s) to dispose of the property if they are otherwise legally entitled to do so.

§ 206.57 Cure provision enabling reinstatement of Deferral Period.

(a) When the mortgagee is required by § 206.55(b)(2) to provide an Eligible Non-Borrowing Spouse with 30 days to cure the default, this section shall apply.

(b) If the default is cured within the 30-day timeframe, the Deferral Period shall be reinstated, unless:

(1) The mortgagee has reinstated the Deferral Period within the past two years immediately preceding the current notification to the Eligible Non-Borrowing Spouse that the mortgage is due and payable;

(2) The reinstatement of the Deferral Period will preclude foreclosure if the mortgage becomes due and payable at a later date; or

(3) The reinstatement of the Deferral Period will adversely affect the priority of the mortgage lien.

(c) If the default is not cured within the 30-day timeframe, the mortgagee shall proceed in accordance with the established timeframes to initiate foreclosure and reasonable diligence in prosecuting foreclosure.

(d) Even after a foreclosure proceeding has been initiated, the mortgagee shall permit an Eligible Non-Borrowing Spouse to cure the condition which resulted in the Deferral Period ceasing, consistent with § 206.55(b)(2), and to reinstate the mortgage and Deferral Period, and the mortgage insurance shall continue in effect. The mortgagee may require the Eligible Non-Borrowing Spouse to pay any costs that the mortgagee incurred to reinstate the mortgage, including foreclosure costs and reasonable attorney's fees. Such costs may not be added to the outstanding loan balance and shall be paid from some other source of funds. The mortgagee shall reinstate the Deferral Period unless:

(1) The mortgagee has reinstated the Deferral Period within the past two years immediately preceding the latest notification to the Eligible Non-Borrowing Spouse that the mortgage is due and payable;

(2) The reinstatement of the Deferral Period will preclude foreclosure if the mortgage becomes due and payable at a later date; or

(3) The reinstatement of the Deferral Period will adversely affect the priority of the mortgage lien.

§ 206.59 Obligations of mortgagee.

(a) *Certifications and disclosures at closing.* At closing, the mortgagee shall obtain the appropriate certification from each borrower identified as married as well as from each identified Non-Borrowing Spouse. When a HECM borrower has identified an Ineligible Non-Borrowing Spouse, the mortgagee shall also disclose the amount of mortgage proceeds that would have been available under the HECM if he or she were an Eligible Non-Borrowing Spouse.

(b) *Divorce.* In the event of a divorce between the HECM borrower and Eligible Non-Borrowing Spouse, a mortgagee shall obtain a copy of the final divorce decree and shall not require the now Ineligible Non-Borrowing Spouse to fulfill any further requirements.

(c) *Death of borrower.* Within 30 days of being notified of the death of the borrower, the mortgagee shall:

(1) Obtain all certifications, as required by the Commissioner, from the Eligible Non-Borrowing Spouse, and continue to obtain the required certifications no less than annually thereafter for the duration of the Deferral Period; and

(2) Notify any Eligible Non-Borrowing Spouse that the due and payable status of the loan is in a Deferral Period only for the amount of time that such Eligible Non-Borrowing Spouse continues to meet all requirements established by the Commissioner.

(d) *Non-compliance with requirements.* If the Eligible Non-Borrowing Spouse ceases to meet any requirements established by the Commissioner, the mortgagee shall notify the Eligible Non-Borrowing Spouse within 30 days that the Deferral Period has ended and the HECM is immediately due and payable, unless the Deferral Period is reinstated in accordance with § 206.57. The mortgagee shall obtain documentation validating the reason for the cessation of the Deferral Period and, if applicable, the reason for reinstatement of the Deferral Period.

§ 206.61 HECM proceeds during a Deferral Period.

(a) The HECM is not assumable. HECM proceeds may not be disbursed to any party during a Deferral Period, except as determined by the Commissioner through notice.

(b) If a Repair Set Aside was established as a condition of the HECM, funds may be disbursed from the Repair Set Aside during a Deferral Period for the sole purpose of paying the cost of those repairs that were specifically identified prior to origination as necessary to the insurance of the HECM. Repairs under this paragraph shall only be paid for using funds from the Repair Set Aside if the repairs are satisfactorily completed during the time period established in the Repair Rider or such additional time as provided by the Commissioner. Unused funds remaining beyond the established time period shall not be disbursed.

Subpart C—Contract Rights and Obligations

Sale, Assignment and Pledge

§ 206.101 Sale, assignment and pledge of insured mortgages.

(a) *Sale of interests in insured mortgages.* No mortgagee may sell or otherwise dispose of any mortgage insured under this part, or group of mortgages insured under this part, or any partial interest in such mortgage or mortgages by means of any agreement, arrangement or device except pursuant to this subpart.

(b) *Sale of insured mortgage to approved mortgagee.* A mortgage insured under this part may be sold to another approved mortgagee. The seller shall notify the Commissioner of the sale within 15 calendar days, on a form prescribed by the Commissioner and acknowledged by the buyer.

(c) *Effect of sale of insured mortgage.* When a mortgage insured under this part is sold to another approved mortgagee, the buyer shall thereupon succeed to all the rights and become bound by all the obligations of the seller under the contract of insurance and the seller shall be released from its obligations under the contract, provided that the seller shall not be relieved of its obligation to pay mortgage insurance premiums until the notice required by § 206.101(b) is received by the Commissioner.

(d) *Assignments, pledges and transfers by approved mortgagee.* (1) An assignment, pledge, or transfer of a mortgage or group of mortgages insured under this part, not constituting a final sale, may be made by an approved mortgagee to another approved mortgagee provided the following requirements are met:

(i) The assignor, pledgor or transferor shall remain the mortgagee of record.

(ii) The Commissioner shall have no obligation to recognize or deal with any party other than the mortgagee of record with respect to the rights, benefits and obligations of the mortgagee under the contract of insurance.

(2) An assignment or transfer of an insured mortgage or group of insured mortgages may be made by an approved mortgagee to other than an approved mortgagee provided the requirements under paragraphs (d)(1)(i) and (d)(1)(ii) of this section are met and the following additional requirements are met:

(i) The assignee or transferee shall be a corporation, trust or organization (including but not limited to any pension trust or profit-sharing plan) which certifies to the approved mortgagee that:

(A) It has assets of $100,000 or more; and

(B) It has lawful authority to hold an insured mortgage or group of insured mortgages.

(ii) The assignment or transfer shall be made pursuant to an agreement under which the transferor or assignor is obligated to take one of the following alternate courses of action within 1 year from the date of the assignment or within such additional period of time as may be approved by the Commissioner:

(A) The transferor or assignor shall repurchase and accept a reassignment of such mortgage or group of mortgages.

(B) The transferor or assignor shall obtain a sale and transfer of such mortgage or group of mortgages to an approved mortgagee.

(3) Notice to or approval of the Commissioner is not required in connection with assignments, pledges or transfers pursuant to this section.

(e) *Declaration of trust.* A sale of a beneficial interest in a group of mortgages insured under this part, where the interest to be acquired is related to all of the mortgages as an entirety, rather than an interest in a specific mortgage, shall be made only pursuant to a declaration of trust, which has been approved by the Commissioner prior to any such sale.

(f) *Transfers of partial interests.* A partial interest in a mortgage insured under this part may be transferred under a participation agreement without obtaining the approval of the Commissioner, if the following conditions are met:

(1) *Principal mortgagee.* The insured mortgage shall be held by an approved mortgagee which, for the purposes of

this section, shall be referred to as the *principal mortgagee.*

(2) *Interest of principal mortgagee.* The principal mortgagee shall retain and hold for its own account a financial interest in the insured mortgage.

(3) *Qualification for holding partial interest.* A partial interest in an insured mortgage shall be issued to and held only by:

(i) A mortgagee approved by the Commissioner; or

(ii) A corporation, trust or organization (including, but not limited to any pension fund, pension trust, or profit-sharing plan) which certifies to the principal mortgagee that:

(A) It has assets of $100,000 or more; and

(B) It has lawful authority to acquire a partial interest in an insured mortgage.

(4) *Participation agreement provisions.* The participation agreement shall include provisions that:

(i) The principal mortgagee shall retain title to the mortgage and remain the mortgagee of record under the contract of mortgage insurance.

(ii) The Commissioner shall have no obligation to recognize or deal with anyone other than the principal mortgagee with respect to the rights, benefits and obligations of the mortgagee under the contract of insurance.

(iii) The mortgage and loan documents shall remain in the custody of the principal mortgagee.

(iv) The responsibility for servicing the insured mortgages shall remain with the principal mortgagee.

§ 206.102 Insurance Funds.

Loans endorsed for insurance under this part, prior to October 1, 2008, shall be obligations of the General Insurance Fund. Loans endorsed for insurance under this part, on or after October 1, 2008, shall be obligations of the Mutual Mortgage Insurance Fund.

Mortgage Insurance Premiums

§ 206.103 Payment of MIP.

(a) The payment of any MIP due under this subpart shall be made to the Commissioner by the mortgagee in cash until an event described in paragraph (b) or (c) of this section occurs.

(b) *Payment of the mortgage.* The MIP shall no longer be remitted if the mortgage is paid in full.

(c) *Acquisition of title.* (1) If the mortgagee or a party other than the mortgagee acquires title at a foreclosure sale, or the mortgagee acquires title by a deed in lieu of foreclosure, and the mortgagee notifies the Commissioner that a claim for the payment of the insurance benefits will not be presented, the MIP shall no longer be remitted.

(2) If the mortgagee or a party other than the mortgagee acquires title at a foreclosure sale or the mortgagee acquires title by a deed in lieu of foreclosure, or where the property is sold in accordance with § 206.125(c), and a claim for the payment of the insurance benefits will be presented, the MIP shall no longer be remitted as of the date of the foreclosure sale, the date the deed in lieu of foreclosure is recorded, or the date in which the sale in accordance with § 206.125(c) is completed, as applicable.

§ 206.105 Amount of MIP.

(a) *Initial MIP.* The mortgagee shall pay to the Commissioner an initial MIP that does not exceed three percent of the maximum claim amount.

(b) *Monthly MIP.* The Commissioner may establish and collect a monthly MIP, which will accrue daily from the closing date, at a rate not to exceed 1.50 percent of the remaining insured principal balance, or up to 1.55 percent for any mortgage involving an original principal obligation that is greater than 95 percent of appraised value of the property. A mortgagee may only add the monthly MIP to the loan balance when paid to the Commissioner.

(c) *Calculation of the initial MIP.* The mortgagee shall calculate the initial MIP based on the amount of funds the borrower has elected to be made available during the First 12-Month Disbursement Period, except that the calculation shall not include any funds set aside in the Servicing Fee Set Aside, if applicable. The initial MIP calculation shall be determined based on the sum of the following amounts:

(1) For adjustable interest rate HECMs, the amount of Mandatory Obligations, the amount disbursed to the borrower at loan closing, and the amount of the available Initial Disbursement Limit not taken by the borrower at loan closing that the borrower selects to remain available during the First 12-Month Disbursement Period.

(2) For fixed interest rate HECMs, the amount of Mandatory Obligations and the amount disbursed to the borrower at loan closing.

(d) *Adjustments to initial or monthly MIP.* The Commissioner may adjust the amount of any initial or monthly MIP through notice. Such notice shall establish the effective date of any premium adjustment therein.

§ 206.107 Mortgagee election of assignment or shared premium option.

(a) *Election of option.* Before the mortgage is submitted for insurance endorsement, the mortgagee shall elect either the assignment option or the shared premium option.

(1) Under the assignment option, the mortgagee shall have the option of assigning the mortgage to the Commissioner if the outstanding loan balance is equal to or greater than 98 percent of the maximum claim amount, regardless of the deferral status, or the borrower has requested a payment which exceeds the difference between the maximum claim amount and the outstanding loan balance and:

(i) The mortgagee is current in making the required payments under the mortgage to the borrower;

(ii) The mortgagee is current in its payment of the MIP (and late charges and interest on the MIP, if any) to the Commissioner;

(iii) The mortgage is not due and payable under § 206.27(c)(1), or, if due and payable under § 206.27(c)(1), its due and payable status has been deferred pursuant to a Deferral Period;

(iv) An event described in § 206.27(c)(2) has not occurred, or the Commissioner has been so informed but has denied approval for the mortgage to be due and payable. At the mortgagee's option, the mortgagee may forgo assignment of the mortgage and file a claim under any of the circumstances described in § 206.123(a)(3)–(5); and

(v) The mortgage is a first lien of record and title to the property securing the mortgage is good and marketable. The provisions of § 206.136 pertaining to mortgagee certifications also apply.

(2) Under the shared premium option, the mortgagee may not assign a mortgage to the Commissioner unless the mortgagee fails to make payments and the Commissioner demands assignment (§ 206.123(a)(2)), but the mortgagee shall only be required to remit a reduced monthly MIP to the Commissioner. The mortgagee shall collect from the borrower the full amount of the monthly MIP provided in § 206.105(b) but shall retain a portion of the monthly MIP paid by the borrower as compensation for the default risk assumed by the mortgagee. The portion of the MIP to be retained by a mortgagee shall be determined by the Commissioner as calculated in § 206.109. For a particular mortgage, the applicable portion shall be determined as of the date of the commitment. The mortgagee retains the right to file a claim under any of the circumstances described in § 206.123(a)(2)–(5).

(b) *No election for shared appreciation.* Shared appreciation mortgages shall be insured by the Commissioner only under the shared premium option.

§ 206.109 Amount of mortgagee share of premium.

Using the factors provided by the Commissioner, the amount of the mortgagee share of the premium shall be determined for each mortgage based upon the age of the youngest borrower or Eligible Non-Borrowing Spouse and the expected average mortgage interest rate.

§ 206.111 Due date of MIP.

(a) *Initial MIP.* The mortgagee shall pay the initial MIP to the Commissioner within fifteen days of closing and as a condition to the endorsement of the mortgage for insurance.

(b) *Monthly MIP.* Each monthly MIP shall be due to the Commissioner on the first business day of each month except the month in which the mortgage is closed.

§ 206.113 Late charge and interest.

(a) *Late charge.* Initial MIP remitted to the Commissioner more than 5 days after the payment date in § 206.111(a) and monthly MIP remitted to the Commissioner more than 5 days after the payment date in § 206.111(b) shall include a late charge of four percent of the amount owed.

(b) *Interest.* In addition to any late charge provided in paragraph (a) of this section, the mortgagee shall pay interest on any initial MIP remitted to the Commissioner more than 20 days after closing, and interest on any monthly MIP remitted to the Commissioner more than 5 days after the payment date prescribed in § 206.111(b). Such interest rate shall be paid at a rate set in conformity with the Treasury Financial Manual.

(c) *Paid by mortgagee.* Any late charge and interest owed may not be added to the outstanding loan balance and must be paid by the mortgagee.

§ 206.115 Insurance of mortgage.

(a) *Mortgages with firm commitments.* For applications for insurance involving mortgages not eligible to be originated under the Direct Endorsement program under § 203.5 (any reference to § 203.255 in § 203.5 shall mean § 206.115 for purposes of this section), the Commissioner will endorse the mortgage for insurance by issuing a Mortgage Insurance Certificate.

(b) *Endorsement with Direct Endorsement processing.* For applications for insurance involving mortgages originated under the Direct Endorsement program under § 203.5 (any reference to § 203.255 in § 203.5 shall mean § 206.115 for purposes of this section), the mortgagee shall submit to the Commissioner, within 60 days after the date of closing of the loan or such additional time as permitted by the Commissioner, properly completed documentation and certifications as listed in this paragraph (b):

(1) Property appraisal upon a form meeting the requirements of the Commissioner (including, if required, any additional documentation supporting the appraised value of the property under § 206.52), and a HUD conditional commitment, or a Lender's Notice of Value issued by the Lender Appraisal Processing Program (LAPP) approved lender when the appraisal was originally completed for use in a VA application, but only if the appraiser was also on the FHA roster as of the effective date of the appraisal, and all accompanying documents required by the Commissioner;

(2) An application for insurance of the mortgage in a form prescribed by the Commissioner;

(3) A certified copy of the mortgage and loan documents executed upon forms which meet the requirements of the Commissioner;

(4) An underwriter certification, on a form prescribed by the Commissioner, stating that the underwriter has personally reviewed the appraisal report and credit application (including the analysis performed on the worksheets) and that the proposed mortgage complies with FHA underwriting requirements, and incorporates each of the underwriter certification items that apply to the mortgage submitted for endorsement, as set forth in the applicable handbook or similar publication that is distributed to all Direct Endorsement mortgagees, except that if FHA makes the TOTAL Mortgage Scorecard available to HECM mortgagees by setting out requirements applicable for the use of the TOTAL Mortgage Scorecard in a **Federal Register** notice for comment, mortgagees may follow such procedures and meet such requirements in lieu of providing the underwriter certification;

(5) Where applicable, a certificate under oath and contract regarding use of the dwelling for transient or hotel purposes;

(6) Where an individual water or sewer system is being used, an approval letter from the local health authority indicating approval of the system in accordance with § 200.926d(f);

(7) A mortgage certification on a form prescribed by the Commissioner, stating that the authorized representative of the mortgagee who is making the certification has personally reviewed the mortgage documents and the application for insurance endorsement, and certifying that the mortgage complies with the requirements of paragraph (b) of this section. The certification shall incorporate each of the mortgagee certification items that apply to the mortgage loan submitted for endorsement, as set forth in the applicable handbook or similar publication that is distributed to all Direct Endorsement mortgagees;

(8) Documents required by § 206.15;

(9) Documentation providing that the seller is the owner of record in accordance with § 206.52(a) and the time restriction requirements of § 206.52(b) are met;

(10) For HECM for Purchase transactions, a Certificate of Occupancy, or its equivalent, if required for new construction; and

(11) Such other documents as the Commissioner may require.

(c) *Pre-endorsement review for Direct Endorsement.* (1) Upon submission by an approved mortgagee of the documents required by paragraph (b) of this section, the Commissioner will review the documents and determine that:

(i) The mortgage is executed on a form which meets the requirements of the Commissioner;

(ii) The mortgage maturity meets the requirements of the applicable program;

(iii) The stated mortgage amount does not exceed 150 percent of the maximum claim amount;

(iv) All documents required by paragraph (b) of this section are submitted;

(v) All necessary certifications are made in accordance with paragraph (b) of this section;

(vi) There is no mortgage insurance premium, late charge or interest due to the Commissioner; and

(vii) The mortgage was not in default when submitted for insurance or, if submitted for insurance more than 60 days after closing, the mortgagee certifies that the borrower is current in paying all property charges or is otherwise in compliance with all the terms and conditions of the mortgage documents.

(2) The Commissioner is authorized to determine if there is any information indicating that any certification or required document is false, misleading, or constitutes fraud or misrepresentation on the part of any party, or that the mortgage fails to meet a statutory or regulatory requirement. If, following this review, the mortgage is determined to be eligible, the

Commissioner will endorse the mortgage for insurance by issuance of a Mortgage Insurance Certificate. If the mortgage is determined to be ineligible, the Commissioner will inform the mortgagee in writing of this determination, and include the reasons for the determination and any corrective actions that may be taken.

(d) *Submission by mortgagee other than originating mortgagee.* If the originating mortgagee assigns the mortgage to another approved mortgagee before pre-endorsement review under paragraph (c) of this section, the assignee may submit the required documents for pre-endorsement review in the name of the originating mortgagee. All certifications must be executed by the originating mortgagee (or its underwriter, if appropriate). The purchasing mortgagee may pay any required mortgage insurance premium, late charge and interest.

(e) *Post-Endorsement review for Direct Endorsement.* Following endorsement for insurance, the Commissioner may review all documents required by paragraph (b) of this section. If, following this review, the Commissioner determines that the mortgage does not satisfy the requirements of the Direct Endorsement program, the Commissioner may place the mortgagee on Direct Endorsement probation, or terminate the authority of the mortgagee to participate in the Direct Endorsement program pursuant to § 206.15, or refer the matter to the Mortgagee Review Board for action pursuant to part 25 of this title.

(f) *Creation of the contract.* The mortgage shall be an insured mortgage from the date of the issuance of a Mortgage Insurance Certificate, from the date of the endorsement of the credit instrument, or from the date of FHA's electronic acknowledgement to the mortgagee that the mortgage is insured, as applicable. The Commissioner and the mortgagee are thereafter bound by the regulations in this subpart with the same force and to the same extent as if a separate contract had been executed relating to the insured mortgage, including the provisions of the regulations in this subpart and of the National Housing Act.

§ 206.116 Refunds.

No amount of the initial MIP shall be refundable except as authorized by the Commissioner.

HUD Responsibility to Borrowers

§ 206.117 General.

The Commissioner is required by statute to take any action necessary to provide a borrower with funds to which the borrower is entitled under the mortgage and which the borrower does not receive because of the default of the mortgagee. The Commissioner may hold a second mortgage to secure repayment by the borrower under § 206.27(d). Where the Commissioner does not hold a second mortgage, but makes a payment to the borrower, and such payment is not reimbursed by the mortgagee, the Commissioner shall accept assignment of the first mortgage.

§ 206.119 [Reserved]

§ 206.121 Commissioner authorized to make payments.

(a) *Investigation.* The Commissioner will investigate all complaints by a borrower concerning late payments. If the Commissioner determines that the mortgagee is unable or unwilling to make all payments required under the mortgage, including late charges, the Commissioner shall pay such payments and late charges to the borrower.

(b) *Reimbursement or assignment.* The Commissioner may demand that within 30 days from the demand, the mortgagee reimburse the Commissioner, with interest from the date of payment by the Commissioner, or assign the insured mortgage to the Commissioner. Interest shall be paid at a rate set in conformity with the Treasury Financial Manual. If the mortgagee complies with the reimbursement demand, then the contract of insurance shall not be affected. If the mortgagee complies by assigning the mortgage for record within 30 days of the demand, then the Commissioner shall pay an insurance claim as provided in § 206.129(e)(3) and assume all responsibilities of the mortgagee under the first mortgage. If the mortgagee fails to comply with the demand within 30 days, the contract of insurance will terminate as provided in § 206.133(c).

(c) *Second mortgage.* If the contract of insurance is terminated as provided in § 206.133(c), all payments to the borrower by the Commissioner will be secured by the second mortgage, unless otherwise provided by the Commissioner. Payments will be due and payable in the same manner as under the insured first mortgage. The liability of the borrower under the first mortgage shall be limited to payments actually made by the mortgagee to or on behalf of the borrower (including prior recoupment of the MIP remitted by the mortgagee and billed to the borrower), and shall exclude accrued interest, whether or not it has been included in the outstanding loan balance, and shared appreciation, if any. Interest will stop accruing on the first mortgage when the Commissioner begins to make payments under the second mortgage. The first mortgage will not be due and payable until the second mortgage is due and payable.

Claim Procedure

§ 206.123 Claim procedures in general.

(a) *Claims.* Mortgagees may submit claims for the payment of the mortgage insurance benefits if:

(1) The conditions of § 206.107(a)(1) pertaining to the optional assignment of the mortgage by the mortgagee have been met and the mortgagee assigns the mortgage to the Commissioner;

(2) The mortgagee is unable or unwilling to make the payments under the mortgage and assigns the mortgage to the Commissioner pursuant to the Commissioner's demand, as provided in § 206.121(b);

(3) The borrower or other permissible party sells the property for less than the outstanding loan balance and the mortgagee releases the mortgage of record to facilitate the sale, as provided in § 206.125(c);

(4) The mortgagee acquires title to the property by foreclosure or a deed in lieu of foreclosure and sells the property as provided in § 206.125(g) for an amount which does not satisfy the outstanding loan balance or fails to sell the property as provided in § 206.127(a)(2); or

(5) The mortgagee forecloses and a bidder other than the mortgagee purchases the property for an amount that is not sufficient to satisfy the outstanding loan balance, as provided in § 206.125(e).

(b) [Reserved]

§ 206.125 Acquisition and sale of the property.

(a) *Initial action by the mortgagee.* (1) The mortgagee shall notify the Commissioner within 60 days of the mortgage becoming due and payable when the conditions stated in the mortgage, as required by § 206.27(c)(1) have occurred or when the Deferral Period ends. The mortgagee shall notify the Commissioner within 30 days of one of the conditions stated in the mortgage, as required by § 206.27(c)(2), occurring.

(2) After notifying and receiving approval of the Commissioner when needed, the mortgagee shall notify the borrower, Eligible Non-Borrowing Spouse, borrower's estate and borrower's heir(s), as applicable, within 30 days of the later of notifying the Commissioner or receiving approval, if needed, that the mortgage is due and payable. The mortgagee shall give the applicable party 30 days from the date of notice to engage in the following actions:

(i) Pay the outstanding loan balance, including any accrued interest, MIP, and mortgagee advances in full;

(ii) Sell the property for an amount not to be less than the amount determined by the Commissioner through notice, which shall not exceed 95 percent of the appraised value as determined under § 206.125(b), with the net proceeds of the sale to be applied towards the outstanding loan balance. In no event shall closing costs exceed 11 percent of the sales price. For the purposes of this section, *sell* includes the transfer of title by operation of law;

(iii) Provide the mortgagee with a deed in lieu of foreclosure;

(iv) Correct the condition which resulted in the mortgage coming due and payable for reasons other than the death of the last surviving borrower;

(v) For an Eligible Non-Borrowing Spouse, correct the condition which resulted in an end to the Deferral Period in accordance with § 206.57; or

(vi) Such other actions as permitted by the Commissioner through notice.

(3) For a borrower, even after a foreclosure proceeding is begun, the mortgagee shall permit the borrower to correct the condition which resulted in the mortgage coming due and payable and to reinstate the mortgage, and the mortgage insurance shall continue in effect. The mortgagee may require the borrower to pay any costs that the mortgagee incurred to reinstate the borrower, including foreclosure costs and reasonable attorney's fees. Such costs shall be paid by adding them to the outstanding loan balance. The mortgagee may refuse reinstatement by the borrower if:

(i) The mortgagee has accepted reinstatement of the mortgage within the past two years immediately preceding the current notification to the borrower that the mortgage is due and payable;

(ii) Reinstatement will preclude foreclosure if the mortgage becomes due and payable at a later date; or

(iii) Reinstatement will adversely affect the priority of the mortgage lien.

(4) For an Eligible Non-Borrowing Spouse, even after a foreclosure proceeding has been initiated, the mortgagee shall permit the Eligible Non-Borrowing Spouse to cure the condition which resulted in the Deferral Period ceasing, in accordance with § 206.57(d).

(b) *Appraisal.* The mortgagee shall have the property appraised by an appraiser on the FHA roster no later than 30 days after receipt of the request by an applicable party in connection with a potential property sale. The property shall be appraised before a foreclosure sale and have an effective appraisal date that is no more than 30 days before such sale. The appraisal shall be at the requesting party's expense unless the mortgage is due and payable. If the mortgage is due and payable, the appraisal shall be at the mortgagee's expense but the mortgagee shall have a right to be reimbursed out of the proceeds of any sale by the borrower or other permissible party.

(c) *Sale by borrower or other permissible party.* Where the HECM is not due and payable, the borrower or an authorized representative of the borrower may sell the property for at least the lesser of the outstanding loan balance or the appraised value. Where the HECM is due and payable at the time the contract for sale is executed, the borrower or other party with legal right to dispose of the property may sell the property in accordance with the amount established by § 206.125(a)(2)(ii). The mortgagee shall satisfy the mortgage of record (and the Commissioner will satisfy any second mortgage required by the Commissioner under § 206.27(d) of record) in order to facilitate the sale, provided that there are no junior liens (except the mortgage to secure payments by the Commissioner if required under § 206.27(d)) and all the net proceeds from the sale are paid to the mortgagee.

(d) *Initiation of foreclosure.* (1) The mortgagee shall commence foreclosure of the mortgage within six months of the due date defined in § 206.129(d)(1), or within such additional time as may be approved by the Commissioner.

(2) If the laws of the State, city or municipality or other political subdivision in which the mortgaged property is located or if Federal bankruptcy law does not permit the commencement of the foreclosure in accordance with § 206.125(d)(1), the mortgagee shall commence foreclosure within six months after the expiration of the time during which such foreclosure is prohibited by such laws.

(3) The mortgagee shall give written notice to the Commissioner within 30 days after the initiation of foreclosure proceedings, and shall exercise reasonable diligence in prosecuting the foreclosure proceedings to completion and in acquiring title to and possession of the property. A time frame that is determined by the Commissioner to constitute "reasonable diligence" for each State is made available to mortgagees.

(4) The mortgagee shall bid at the foreclosure sale an amount at least equal to the lesser of the sum of the outstanding loan balance and any and all other incurred expenses, or the current appraised value of the property.

(e) *Other bidders at foreclosure sale.* If a party other than the mortgagee is the successful bidder at the foreclosure sale, the net proceeds of the sale shall be applied to the outstanding loan balance.

(f) *Deed in lieu of foreclosure.* (1)(i) In order to avoid delays and additional expense as a result of instituting and completing a foreclosure action, the mortgagee shall accept a deed in lieu of foreclosure from the borrower or other party with legal right to dispose of the property provided it is within 9 months of the due date and the mortgagee is able to obtain good and marketable title.

(ii) *Cash for Keys.* The Commissioner may provide a financial incentive, in an amount to be determined by the Commissioner, to be paid by the mortgagee and reimbursed through any subsequent claim where a borrower or other party with a legal right to do so deeds the property within 6 months of the due date.

(2) In exchange for the executed and delivered deed, the mortgagee shall cancel the credit instrument and deliver it to the borrower and satisfy the mortgage of record. If applicable, the mortgagee shall request that the Commissioner cancel the credit instrument and deliver it to the borrower and satisfy the mortgage of record.

(g) *Sale of the acquired property.* (1) Upon acquisition of the property by foreclosure or deed in lieu of foreclosure, the mortgagee shall take possession of, preserve and repair the property and shall make diligent efforts to sell the property within six months from the date the mortgagee acquired the property, or such additional time as provided by the Commissioner. The mortgagee shall sell the property for an amount not less than the appraised value (as provided under paragraph (b) of this section) unless the mortgagee does not file an application for insurance benefits or written permission is obtained from the Commissioner authorizing a sale at a lower price.

(2) Repairs shall not exceed those required by local law, or the requirements of the Commissioner or the Secretary of Veterans Affairs if the sale of the property is financed with a mortgage insured by the Commissioner or guaranteed, insured or taken by the Secretary of Veterans Affairs. No other repairs shall be made without the specific advance approval of the Commissioner.

(3) The mortgagee shall not enter into a contract for the preservation, repair or sale of the property with any officer, employee, or owner of ten percent or more interest in the mortgagee or with any other person or organization having

an identity of interest with the mortgagee or with any relative of such officer, employee, owner or person.

§ 206.127 Application for insurance benefits.

(a) *Mortgagee acquires title.* (1) The mortgagee shall apply for the payment of the insurance benefits within 30 days after the sale of the property by the mortgagee or within such additional time as approved by the Commissioner. Application shall be made by notifying the Commissioner of the sale of the property, the sale price, and income and expenses incurred in connection with the acquisition, repair and sale of the property.

(2) If the property will not be sold within six months from the date the mortgagee acquired title, the mortgagee shall, at least 15 days prior to the expiration of the six month period, have the property appraised. Within 30 days of receipt of the appraisal, the mortgagee shall apply for the insurance benefits as provided in paragraph (a) of this section, substituting the appraised value for the sale price. The mortgagee may add the cost of the appraisal to the claim amount.

(b) *Party other than the mortgagee acquires title.* The mortgagee shall apply for the payment of the insurance benefits within 30 days after a party other than the mortgagee acquires title to the property. Application shall be made by notifying the Commissioner of the sale of the property and the sale price. Transferring a portfolio that includes REO properties to another entity does not constitute a "sale" under this section.

(c) *Mortgagee assigns the mortgage.* The mortgagee shall file its claim for the payment of the insurance benefits within 15 days after the date the mortgage is assigned for record to the Commissioner. The application for the payment of the insurance benefits shall include the items listed in § 206.135(a) and the certification required under § 206.136.

(d) *Contract of insurance not terminated.* Mortgagees may only file an application for insurance benefits provided the contract of insurance has not terminated.

§ 206.129 Payment of claim.

(a) *General.* If the claim for the payment of the insurance benefits is acceptable to the Commissioner, payment shall be made in cash in the amount determined under this section.

(b) *Limit on claim amount.* (1) For HECMs assigned Case Numbers prior to [insert effective date of final rule], in no case may the claim paid under this subpart exceed the maximum claim amount. The interest allowance provided in paragraphs (d)(3)(x), (e)(2) and (f)(2)(i) of this section shall not be included in determining the limit on the claim amount.

(2) For HECMs assigned Case Numbers on or after [insert effective date of final rule], in no case may the claim paid under this subpart exceed the maximum claim amount, as defined in § 206.3. The interest allowance provided in paragraphs (d)(3)(x), (e)(2) and (f)(2)(ii) of this section shall be made in cash in the amount determined under this section.

(c) *Shared appreciation mortgages.* The terms *loan balance* and *accrued interest* as used in this section do not include interest attributable to the mortgagee's share of the appreciated value of the property.

(d) *Amount of payment—mortgagee acquires title or is unsuccessful bidder.* This paragraph describes the amount of payment if the mortgagee acquires title by purchase, foreclosure, or deed in lieu of foreclosure, or when a party other than the mortgagee is the successful bidder at the foreclosure sale.

(1) *Due date* means the date when the mortgagee notifies or should have notified the Commissioner that the mortgage is due and payable under the conditions stated in the mortgage, as required by § 206.27(c)(1) or the date that the Deferral Period, as provided for in the mortgage by § 206.27(c)(3), ends; or the date the Commissioner approved a due and payable request as provided for in the mortgage by § 206.27(c)(2).

(2) The amount of the claim shall be computed by:

(i) Totaling the outstanding loan balance and any accrued interest and servicing fees which have not been added to the outstanding loan balance as of the due date, and allowances for items set forth in paragraph (d)(3) of this section; and

(ii) Subtracting from that total the amount for which the property was sold (or the appraised value determined under § 206.127(a)(2)) and the items set forth in paragraph (d)(4) of this section.

(3) The claim shall include items listed in paragraphs (d)(2)(i) through (xiv) of this section. For HECMs with Case Numbers assigned on or after [insert effective date of final rule], the inclusion of items listed in paragraphs (d)(2)(i), (ii), and (iii) of this section shall be limited to two years of advances made by the mortgagee on such expenses. The Commissioner may approve an extension of the two-year limitation under such circumstances, terms, and conditions determined and specified as acceptable to the Commissioner.

(i) Taxes, ground rents, water rates, and utility charges that are liens prior to the mortgage;

(ii) Special assessments, which are noted on the application for insurance or which become liens after the insurance of the mortgage;

(iii) Hazard and flood insurance premiums on the mortgaged property not in excess of a *reasonable rate;*

(A) For purposes of this section, *reasonable rate* means a rate that is not in excess of the rate or advisory rate set by the principal State-licensed rating organization for essential property insurance in the voluntary market, or if coverage is available under a FAIR Plan, the FAIR Plan rate;

(B) If a State has neither a FAIR Plan nor a State-licensed rating organization for essential property insurance in the voluntary market, the mortgagee must provide to the Home Ownership Center (HOC) having jurisdiction, information concerning the lowest rates available from an insurer for the types of coverage involved, with a request for a determination of whether the rate is reasonable. FHA will determine the rate to be reasonable if it approximates the rate assessed for comparable insurance coverage applicable to similarly situated properties in a State that offers a FAIR Plan or maintains a State-licensed rating organization;

(iv) Taxes imposed upon any deeds or other instruments by which said property was acquired by the mortgagee pursuant to § 206.125;

(v) Reasonable payments made by the mortgagee, with the approval of the Commissioner, for the purpose of protecting, operating, or preserving the property, or removing debris from the property;

(vi) Reasonable costs for performing property inspections required by § 206.140 and to determine if the property is vacant or abandoned are considered to be costs of protecting, operating or preserving the property;

(vii) Charges for the administration, operation, maintenance, or repair of community-owned property or the maintenance or repair of the mortgaged property, paid by the mortgagee for the purpose of discharging an obligation arising out of a covenant filed for record prior to the issuance of the mortgage; and charges for the repair or maintenance of the mortgaged property required by, and in an amount approved by, the Commissioner under § 206.142;

(viii) Reasonable costs of the title search ordered by the mortgagee, in accordance with procedures prescribed by FHA, to determine if the criteria for approval of the mortgagee's acceptance of a deed in lieu of foreclosure or to determine clear title to complete a pre-foreclosure sale;

(ix) Foreclosure costs or costs of acquiring the property in accordance with such conditions as the Commissioner shall prescribe;

(x) An amount equal to the interest allowance which would have been earned, from the due date to the date when payment of the claim is made, if the claim had been paid in debentures, except that when the mortgagee fails to meet any one of the applicable requirements of §§ 206.125 and 206.127 of this subpart within the specified time, and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(A) *Debenture interest rate.* The debenture interest rate provided for in § 206.146 shall be used.

(B) *Maturity of debentures.* Debentures shall mature 20 years from the date of issue.

(C) *Registration of debentures.* Debentures shall be registered as to principal and interest.

(D) *Form and amounts of debentures.* Debentures issued under this part shall be in such form and amounts; and shall be subject to such term and conditions; and shall include such provisions for redemption, if any, as may be prescribed by the Commissioner, with the approval of the Secretary of the Treasury; and may be in book entry or certificated registered form, or such other form as the Commissioner by regulation may prescribe.

(E) *Redemption of debentures.* Debentures shall, at the option of the Commissioner and with the approval of the Secretary of the Treasury, be redeemable at par plus accrued interest on any semiannual interest payment date on three months' notice of redemption given in such manner as the Commissioner shall prescribe. The debenture interest on the debentures called for redemption shall cease on the semiannual interest payment date designated in the call notice. The Commissioner may include with the notice of redemption an offer to purchase the debentures at par plus accrued interest at any time during the period between the notice of redemption and the redemption date. If the debentures are purchased by the Commissioner after such call and prior to the named redemption date, the debenture interest shall cease on the date of purchase.

(F) *Issue date of debentures.* The issue date of debentures is determined by the due date as defined in paragraph (d)(1) of this section.

(G) *Cash adjustment.* Any difference of less than $50 between the amount of debentures to be issued to the mortgagee and the total amount of the mortgagee's claim, as approved by the Commissioner, may be adjusted by the issuance of a check in payment thereof;

(xi) Any amount of incentive paid by the mortgagee in accordance with § 206.125(f)(1)(ii);

(xii) Costs of any appraisal under §§ 206.125 or 206.127, provided that the property was appraised after the mortgage became due and payable and that the mortgagee is not otherwise reimbursed for such costs;

(xiii) Reasonable payments made by the mortgagee for:

(A) Preservation and maintenance of the property;

(B) Repairs necessary to meet the objectives of the property standards required for mortgages insured by the Commissioner, those required by local law, and such additional repairs as may be specifically approved in advance by the Commissioner; and

(C) Expenses in connection with the sale of the property including a sales commission at the rate customarily paid in the community and, if the sale to the buyer involves a mortgage insured by the Commissioner or guaranteed by the Secretary of Veterans Affairs, a discount at a rate not to exceed the maximum allowable by the Commissioner, as of the date of execution of the discounted loan; and

(xiv) A certification that the property is undamaged in accordance with § 206.143.

(4) There shall be deducted from the amount computed in paragraph (d)(2)(i) of this section:

(i) The items listed in § 206.145; and

(ii) Any adjustment for damage or neglect to the property pursuant to §§ 206.140, 206.141, and 206.142.

(e) *Amount of payment—assigned mortgages.* This paragraph describes the amount of payment if the mortgagee assigns a mortgage to the Commissioner under § 206.107(a)(1) or § 206.121(b).

(1) When a mortgagee assigns a mortgage which is eligible for assignment under § 206.107(a)(1), the amount of payment shall be computed by subtracting from the outstanding loan balance on the date of assignment all cash retained by the mortgagee, including amounts held or deposited for the account of the borrower or to which it is entitled under the mortgage transaction that have not been applied in reduction of the principal mortgage indebtedness, and any adjustments for damage or neglect to the property pursuant to §§ 206.140, 206.141 and 206.142.

(2) The claim shall also include:

(i) Reimbursement for such costs and attorney's fees as the Commissioner finds were properly incurred in connection with the assignment of the mortgage to the Commissioner; and

(ii) An amount equivalent to the interest allowance which will have been earned from the date the mortgage was assigned to the Commissioner to the date the claim is paid, if the claim had been paid in debentures, except that if the mortgagee fails to meet any of the requirements of § 206.127(c), or § 206.131 if applicable, within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in the payment of the claim shall be computed only to the date on which the particular required action should have been taken or to which it was extended. The provisions of paragraphs (d)(3)(x)(A)–(G) of this section pertaining to debentures are applicable except that the issue date of the debentures shall be the date the mortgage was assigned to the Commissioner.

(3) When a mortgagee assigns a mortgage under § 206.121(b) after demand by the Commissioner, the mortgagee will not receive the entire claim payment as contained in paragraphs (e)(1) and (2) of this section. The amount of the claim shall be computed by totaling the payments made by the mortgagee to the borrower or for the benefit of the borrower, and subtracting from the total the cash retained by the mortgagee, including amounts held or deposited for the account of the borrower or to which it is entitled under the mortgage transaction that have not been applied in reduction of the principal mortgage indebtedness, and any adjustments for damage or neglect to the property pursuant to §§ 206.141 and 206.142. The claim shall also be reduced by an amount determined by the Commissioner to reimburse the Commissioner for administrative expenses incurred in assuming the mortgagee's responsibility under the mortgage, which may include expenses for staff time. If more than one mortgage is assigned to the Commissioner, the administrative expenses incurred for all the mortgages assigned shall be allocated among the mortgages as determined by the Commissioner. The

claim shall not include accrued interest whether or not it has been included in the loan balance.

(f) *Amount of payment-borrower sells the property.* This paragraph describes the amount of payment if the property is sold in accordance with § 206.125(c) to one other than the mortgagee for less than the outstanding loan balance, and the mortgagee releases the mortgage to facilitate the sale.

(1)(i) *For HECMs assigned Case Numbers prior to [insert effective date of final rule],* the amount of the claim shall be computed by totaling the outstanding loan balance and any accrued interest and servicing fees which have not been added to the outstanding loan balance on the date the deed is recorded, and an allowance for items set forth in paragraph (d)(3)(i)–(vii) and (d)(3)(xi) of this section, and subtracting from the total the amount for which the property was sold.

(ii) *For HECMs assigned Case Numbers on or after [insert effective date of final rule], the following provisions apply.*

(A) *When the loan is not in due and payable status.* The amount of the claim shall be computed by totaling the outstanding loan balance and any accrued interest and servicing fees which have not been added to the outstanding loan balance on the date the deed is recorded, and an allowance for items set forth in paragraph (d)(3)(xiii)(C) of this section, and subtracting from the total the amount for which the property was sold.

(B) *When the loan is in due and payable status.* The amount of the claim shall be computed by totaling the outstanding loan balance and any accrued interest and servicing fees which have not been added to the outstanding loan balance as of the due date, the items set forth in paragraph (d)(3) of this section, and subtracting from the total the amount for which the property was sold.

(2)(i) *For HECMs assigned Case Numbers prior to [insert effective date of final rule],* the claim shall also include an amount equivalent to the interest allowance which would have been earned from the date the deed is recorded to the date when payment of the claim is made, if the claim had been paid in debentures, and in a manner satisfactory to the Commissioner; the interest allowance in such cash payment shall be computed only to the date on which the particular action should have been taken or to which it was extended. The provisions of paragraphs (d)(3)(x)(A)–(G) of this section pertaining to debentures apply except that the issue date of the debentures is the date the deed is recorded instead of the due date.

(ii) *For HECMs assigned Case Numbers on or after [insert effective date of final rule], the following provisions apply:*

(A) *When the loan is not in due and payable status.* The claim shall also include an amount equivalent to the interest allowance which would have been earned from the date the deed is recorded to the date when payment of the claim is made, if the claim had been paid in debentures, and in a manner satisfactory to the Commissioner; the interest allowance in such cash payment shall be computed only to the date on which the particular action should have been taken or to which it was extended. The provisions of paragraphs (d)(3)(x)(A)–(G) of this section pertaining to debentures apply except that the issue date of the debentures shall be the date the deed is recorded.

(B) *When the loan is in due and payable status.* The claim shall also include an amount equivalent to the interest allowance which would have been earned from the due date to the date when payment of the claim is made, if the claim had been paid in debentures, except that when the mortgagee fails to meet any of the applicable requirements of §§ 206.125 and 206.127 within the specified time determined by the due date, as defined in paragraph (d)(1) of this section (or within such further time as the Commissioner may approve in writing), and in a manner satisfactory to the Commissioner; the interest allowance in such cash payment shall be computed only to the date on which the particular action should have been taken or to which it was extended. The provisions of paragraphs (d)(3)(x)(A)–(G) of this section pertaining to debentures apply.

Condominiums

§ 206.131 Contract rights and obligations for mortgages on individual dwelling units in a condominium.

(a) *Additional requirements.* The requirements of this subpart shall be applicable to mortgages on individual dwelling units in a condominium, except as modified by this section.

(b) *References.* The term *property* as used in this subpart shall be construed to include the individual dwelling unit and the undivided interest in the common areas and facilities as may be designated.

(c) *Assignment of the mortgage.* If the mortgagee assigns the mortgage on the individual dwelling unit to the Commissioner, the mortgagee shall certify:

(1) To any changes in the plan of apartment ownership including the administration of the property;

(2) That as of the date the assignment is filed for record, the family unit is assessed and subject to assessment for taxes pertaining only to that unit; and

(3) To the condition of the property as of the date the assignment is filed for record. Section 234.275 of this chapter concerning the certification of condition is incorporated by reference.

(d) *Condition of the multifamily structure.* The provisions of § 234.270 (a) and (b) of this chapter concerning the condition of the multifamily structure in which the property is located shall be applicable to mortgages insured under this part which are assigned to the Commissioner.

Termination of Insurance Contract

§ 206.133 Termination of insurance contract.

(a) *Payment of the mortgage.* The contract of insurance shall be terminated if the mortgage is paid in full.

(b) *Acquisition of title.* (1) If the mortgagee or a party other than the mortgagee acquires title at a foreclosure sale, or the mortgagee acquires title by a deed in lieu of foreclosure, and the mortgagee notifies the Commissioner that a claim for the payment of the insurance benefits will not be presented, the contract of insurance shall be terminated.

(2) For HECMs with Case Numbers assigned on or after [insert effective date of final rule], if the mortgagee or a party other than the mortgagee acquires title at a foreclosure sale or the mortgagee acquires title by a deed in lieu of foreclosure and a claim for the payment of the insurance benefits will be presented, the contract of insurance shall be terminated as of claim payment.

(c) *Mortgagee fails to make payments.* If the mortgagee fails to make the payments to the borrower as required under the mortgage, and does not reimburse the Commissioner or assign the mortgage to the Commissioner within 30 days from the demand by the Commissioner for reimbursement or assignment, the contract of insurance shall automatically terminate. The Commissioner may later reinstate the contract of insurance, which shall continue in force as if no termination had occurred, upon reimbursement with interest as provided in § 206.121. Upon reinstatement, the mortgagee shall be liable for all MIP which would have been due if no termination had occurred, including late charge and interest as provided in § 206.113.

(d) *Notice of termination.* The mortgagee shall give written notice to the Commissioner, or other notice acceptable to the Commissioner, within 15 days of the occurrence of an event under paragraphs (a) and (b) of this section. No contract of insurance shall be terminated under paragraphs (a) or (b) of this section unless such notice is given.

(e) *Voluntary termination.* The borrower and the mortgagee may jointly request the Commissioner to approve the voluntary termination of the mortgage insurance contract. Prior to approval, the Commissioner shall make certain that the borrower is aware of the consequences which could arise out of the voluntary termination of the contract of insurance. The mortgagee shall cancel the insurance endorsement on the Mortgage Insurance Certificate or Note upon receipt of notice from the Commissioner that the contract of insurance is terminated. Notwithstanding any provision in a mortgage instrument, there shall be no voluntary termination charge due the Commissioner on account of the voluntary termination of any mortgage insurance contract where the request for termination is received by the Commissioner.

(f) *Effect of termination.* When the insurance contract is terminated all rights of the mortgagee shall terminate, including the right to file a claim for insurance benefits. All obligations of the Commissioner shall also cease immediately.

Additional Requirements

§ 206.134 Partial release, addition or substitution of security.

(a) A mortgagee shall not release the security or any part thereof, while the mortgage is insured, without the prior consent of the Commissioner.

(b) A mortgagee may, with the prior consent of the Commissioner, accept an addition to, or substitution of, security for the purpose of removing the dwelling to a new lot or replacing the dwelling with a similar or like kind on the existing lot under the following conditions:

(1) The mortgagee obtains a good and valid first lien on the property to which the dwelling is removed or the existing lot upon which the dwelling is rebuilt;

(2) All damages to the structure are repaired or all rebuilding of the structure is completed without cost to FHA; and

(3) The property to which the dwelling is removed or rebuilt is in an area known to be reasonably free from natural hazards or, if in a flood zone, the borrower will insure or reinsure under the National Flood Insurance Program.

(c) A mortgagee may, without the prior consent of the Commissioner, accept an addition to, or substitution of, security for the purpose of removing the dwelling to a new lot under the following conditions:

(1) The dwelling has survived an earthquake or other disaster with little damage, but continued location on the property might be hazardous;

(2) The conditions stated in paragraph (b) of this section exist; and

(3) Immediately following the emergency removal the mortgagee notifies the Commissioner of the reasons for removal.

§ 206.135 Application for insurance benefits and fiscal data.

(a) On the date the application for assignment is filed, the mortgagee shall submit to the Commissioner:

(1) *Credit and security instrument.* The original credit and security instruments assigned without recourse or warranty, except that no act or omission of the mortgagee shall have impaired the validity and priority of the mortgage.

(2) *Proposed assignment instrument.* A copy of the proposed assignment of mortgage.

(3) *Hazard and flood insurance.* All hazard and flood insurance (if applicable) policies held in connection with the mortgaged property, together with a copy of the mortgagee's notification to the carrier authorizing the amendment of the loss payable clause substituting the Commissioner as the mortgagee.

(4) *Rights and interests.* An assignment of all rights and interests arising under the mortgage, and all claims of the mortgagee against the borrower or others arising out of the mortgage transaction.

(5) *Property.* All property of the borrower held by the mortgagee or to which it is entitled (other than the cash items which are to be retained by the mortgagee).

(6) *Records and accounts.* All records, ledger cards, documents, books, papers and accounts relating to the mortgage transaction.

(7) *Additional information.* Any additional information or data which the Commissioner may require.

(8) *Title evidence.* All title evidence held by the mortgagee. It need not be extended to include the recordation of the assignment. The title insurance policy shall be endorsed from the mortgage insurance company up to the point of assignment. At the point of assignment, the Commissioner shall be named insured under such policy.

(b) All documents required in paragraph (a) of this section must be submitted and approved before a claim for assignment may be submitted.

(c) *Recorded assignment instrument.* The original of the recorded assignment of mortgage shall be forwarded to the Commissioner as soon as received by the mortgagee, but in no case shall it be longer than 12 months after recordation. If the original of the assignment is not available, a copy shall be furnished and the original forwarded as soon as possible.

§ 206.136 Conditions for assignment.

(a) In order for a HECM to be eligible for assignment, the following must be met:

(1) *Priority of mortgage to liens.* The mortgage is prior to all mechanics' and materialmen's liens, homeowners association liens or condo association liens filed of record, regardless of when such liens attach, and prior to all liens and encumbrances, or defects which may arise based on any act or omission by the mortgagee except such liens or other matters as may have been approved by the Commissioner.

(2) *Amount due.* The amount stated in the instrument of assignment is actually due and owing under the mortgage.

(3) *Offsets or counterclaims.* There are no offsets or counterclaims thereto and the mortgagee has a good right to assign.

(b) The mortgagee shall certify that the conditions of paragraph (a) have been met.

§ 206.137 Effect of noncompliance with regulations.

If, for any reason, the mortgagee fails to comply with the regulations in this subpart, the Commissioner may hold processing of the application for insurance benefits in abeyance for a reasonable time in order to permit the mortgagee to comply. In the alternative to holding processing in abeyance, the Commissioner may reconvey title to the property or reassign the mortgage to the mortgagee, in which event the application for insurance benefits shall be considered as cancelled and the mortgagee shall refund the insurance benefits to the Commissioner as well as other funds required by § 206.138 of this part. The mortgagee may reapply for insurance benefits at a subsequent date; provided, however, that the mortgagee may not be reimbursed for any expenses incurred in connection with the property after it has been reconveyed or the mortgage reassigned by the Commissioner, or paid any debenture interest accrued after the date of initial conveyance, whichever is earlier, and there will be deducted from the insurance benefits any reduction in the Commissioner's estimate of the value of the property occurring from the time of reconveyance or mortgage reassignment to the time of reapplication.

§ 206.138 Mortgagee's liability for certain expenditures.

Where the Commissioner accepts an assignment, acquires a property after accepting an assignment of a mortgage, or otherwise pays a claim for insurance benefits and thereafter it becomes necessary for the Commissioner to either reconvey the property or reassign the mortgage to the mortgagee due to the mortgagee's noncompliance with these regulations, the mortgagee shall reimburse the Commissioner for all expenses incurred in connection with such acquisition and reconveyance or reassignment. The reimbursement shall include interest on the amount of insurance benefits refunded by the mortgagee from the date the insurance benefits were paid to the date of refund at an interest rate set in conformity with the Treasury Fiscal Requirements Manual, and the Commissioner's cost of holding the property or servicing the mortgage, accruing on a daily basis, from the date of assignment or claim payment to the date of reconveyance or reassignment. These costs are based on the Commissioner's estimate of the taxes, maintenance and operating expenses of the property, and administrative expenses. Appropriate adjustments shall be made by the Commissioner on account of any income received from the property.

§ 206.140 Inspection and preservation of properties.

The mortgagee, upon learning that a property subject to a mortgage insured under this part is vacant or abandoned, shall be responsible for the inspection of such property at least monthly, if the loan is in a due and payable status. When a mortgage is in due and payable status and efforts to reach the borrower or applicable party by telephone within that period have been unsuccessful, the mortgagee shall be responsible for a visual inspection of the security property to determine whether the property is vacant. The mortgagee shall take reasonable action to protect and preserve such security property when it is determined or should have been determined to be vacant or abandoned until assigned to the Commissioner or an application for insurance benefits is filed, if such action does not constitute an illegal trespass. "Reasonable action" includes the commencement of foreclosure within the time required by § 206.125.

§ 206.141 Property condition.

(a) *Condition at time of transfer.* When the mortgage is assigned to the Commissioner or the property is sold by the mortgagee, the property shall be undamaged by fire, earthquake, flood, or tornado, except as set forth in this subpart.

(b) *Damage to property by waste.* The mortgagee shall not be liable for damage to the property by waste committed by the borrower, its heirs, successors or assigns in connection with mortgage insurance claims.

(c) *Mortgagee responsibility.* The mortgagee shall be responsible for:

(1) Damage by fire, flood, earthquake, hurricane, or tornado; and

(2) Damage to or destruction of security properties on which the loans are in default and which properties are vacant or abandoned, when such damage or destruction is due to the mortgagee's failure to take reasonable action to inspect, protect and preserve such properties as required by § 206.140.

(d) *Limitation.* The mortgagee's responsibility for property damage shall not exceed the amount of its insurance claim as to a particular property.

§ 206.142 Adjustment for damage or neglect.

(a) Except as provided for in paragraphs (a)(1) and (a)(2) of this section: if the property has been damaged by fire, flood, earthquake, hurricane, or tornado, the damage must be repaired before assignment of the mortgage to the Commissioner; if the property has suffered damage because of the mortgagee's failure to take action as required by § 206.140, the damage must be repaired before the mortgagee sells the property.

(1) If the prior approval of the Commissioner is obtained, there will be deducted from the insurance benefits the Commissioner's estimate of the cost of repairing the damage or any insurance recovery received by the mortgagee, whichever is greater.

(2) If the property has been damaged by fire and was not covered by fire insurance at the time of the damage, or the amount of insurance coverage was inadequate to repair fully the damage, only the amount of insurance recovery received by the mortgagee, if any, will be deducted from the insurance benefits, provided the mortgagee certifies, at the time that a claim is filed for insurance benefits, that:

(i) At the time the mortgage was insured, the property was covered by fire insurance in an amount at least equal to the lesser of 100 percent of the insurable value of the improvements, or the principal loan balance of the mortgage;

(ii) The insurer later cancelled this coverage or refused to renew it for reasons other than nonpayment of premium;

(iii) The mortgagee made diligent though unsuccessful efforts within 30 days of any cancellation or non-renewal of hazard insurance, and at least annually thereafter, to secure other coverage or coverage under a FAIR Plan, in an amount described in paragraph (a)(2)(i) of this section, or if coverage to such an extent was unavailable at a reasonable rate, the greatest extent of coverage that was available at a reasonable rate;

(iv) The extent of coverage obtained by the mortgagee in accordance with paragraph (a)(2)(iii) of this section was the greatest available at a reasonable rate, or if the mortgagee was unable to obtain insurance, none was available at a reasonable rate; and

(v) The mortgagee took the actions required by § 206.140.

(b) If the property has been damaged during the time of the mortgagee's possession by events other than fire, flood, earthquake, hurricane, or tornado, or if it was damaged notwithstanding reasonable action by the mortgagee as required by § 206.140, the mortgagee must provide notice of such damage to the Commissioner and may not sell the property until directed to do so by the Commissioner. The Commissioner will either:

(1) Allow the mortgagee to sell the property damaged; or

(2) Require the mortgagee to repair the damage before sale, and the Commissioner will reimburse the mortgagee for reasonable payments not in excess of the Commissioner's estimate of the cost of repair, less any insurance recovery.

§ 206.143 Certificate of property condition.

(a) The mortgagee shall certify that as of the date the mortgagee sold the property in accordance with § 206.125(g) or assignment of the mortgage to the Commissioner, the property was:

(1) Undamaged by fire, flood, earthquake, hurricane or tornado; and

(2) Undamaged due to failure of the mortgagee to take action as required by § 206.140; and

(3) Undamaged while the property was in the possession of the mortgagee.

(b) In the absence of evidence to the contrary, the mortgagee's certificate or description of the damage shall be accepted by the Commissioner as establishing the condition of the property, as of the date of mortgagee sale or assignment of the mortgage to the Commissioner.

§ 206.144 Final payment.

The mortgagee may not file any supplemental claims to its mortgage insurance claim after six months from settlement by the Commissioner of the claim payment except where the Commissioner determines it appropriate and expressly authorizes an extension of time for supplemental claim filings.

§ 206.145 Items deducted from payment.

(a) There shall be deducted from the total of the added items in § 206.129 the following cash items:

(1) All amounts received by the mortgagee on account of the mortgage after the institution of foreclosure proceedings or the acquisition of the property or otherwise after due and payable.

(2) All amounts received by the mortgagee from any source relating to the property on account of rent or other income after deducting reasonable expenses incurred in handling the property.

(3) All cash retained by the mortgagee including amounts held or deposited for the account of the borrower or to which it is entitled under the mortgage transaction that have not been applied in reduction of the outstanding loan balance.

(4) With regard to claims filed pursuant to successful short sales, all amounts received by the mortgagee relating to the sale of the property.

(b) [Reserved]

§ 206.146 Debenture interest rate.

(a) Debentures shall bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate in effect as of the day the commitment was issued, or as of the date the mortgage was endorsed for insurance, whichever rate is higher. For applications involving mortgages originated under the single family Direct Endorsement program, debentures shall bear interest from the date of issue, payable semiannually on the first day of January and on the first day of July of each year at the rate in effect as of the date the mortgage was endorsed for insurance;

(b) For mortgages endorsed for insurance after January 23, 2004, if an insurance claim is paid in cash, the debenture interest rate for purposes of calculating such a claim shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.

Subpart D—Servicing Responsibilities

§ 206.201 Mortgage servicing generally; sanctions.

(a) *General.* This subpart identifies servicing practices that the Commissioner considers acceptable mortgage servicing practices of lending institutions servicing mortgages insured by the Commissioner. Failure to comply with this subpart shall not be a basis for denial of the insurance benefits, but a pattern of refusal or failure to comply will be cause for withdrawal of FHA mortgagee approval.

(b) *Importance of timely payments.* The paramount servicing responsibility is to make timely payments in full as required by the mortgage. Any failure of a mortgagee to make all payments required by the mortgage in a timely manner will be grounds for administrative sanctions authorized by regulations, including 2 CFR part 2424 (Debarment, Suspension, and Limited Denial of Participation), and 24 CFR part 25 (Mortgagee Review Board).

(c) *Responsibility for servicing.* (1) Servicing of insured mortgages must be performed by a mortgagee that is approved by FHA to service insured mortgages. The servicer must fully discharge the servicing responsibilities of the mortgagee as outlined in this part. The mortgagee shall remain fully responsible to the Commissioner for proper servicing, and the actions of its servicer shall be considered to be the actions of the mortgagee. The servicer also shall be fully responsible to the Commissioner for its actions as a servicer.

(2) Whenever servicing of any mortgage is transferred from one mortgagee or servicer to another, notice of the transfer of service shall be delivered:

(i) By the transferor mortgagee or servicer to the borrower. The notification shall be delivered not less than 15 days before the effective date of the transfer and shall contain the information required in 12 CFR 1024.21(e)(2); and

(ii) By the transferee mortgagee or servicer:

(A) *To the borrower.* The notification shall be delivered not less than 15 days before the effective date of the transfer and shall contain the information required in 12 CFR 1024.21(e)(2); and

(B) *To the Commissioner.* This notification shall be delivered within 15 days of the transfer, in a format prescribed by the Commissioner.

§ 206.203 Providing information.

(a) *Statements of account activity.* The mortgagee shall provide to the borrower a monthly statement regarding the activity of the mortgage for each month, as well as for the calendar year. The statement shall summarize the total principal amount which has been paid to the borrower under the mortgage during that calendar year, the MIP paid to the Commissioner and charged to the borrower, the total amount of deferred interest added to the outstanding loan balance, the total outstanding loan balance and the current principal limit. The mortgagee shall include an accounting of all payments for property charges. The statement shall be provided to the borrower monthly until the mortgage is paid in full by the borrower. The mortgagee shall provide the borrower with a new payment plan every time it recalculates monthly payments or the payment option is changed. The statements shall be in a format acceptable to the Commissioner.

(b) [Reserved]

(c) *Servicing—Providing information.* (1) Mortgagees shall provide loan information to borrowers and arrange for individual loan consultation on request. The mortgagee must establish written procedures and controls to assure prompt responses to inquiries. One or more of the following means of making information readily available to borrowers is required:

(i) A servicing office staffed with competent personnel located within 200 miles of the property, capable of providing timely responses to requests for information. Complete records need not be maintained in such an office if the staff is able to secure needed information and pass it on to the borrower.

(ii) Toll-free telephone service at an office capable of providing needed information.

(2)(i) All borrowers must be informed of and reminded annually of the system available for obtaining answers to loan inquiries and the office from which needed information may be obtained. Toll-free telephone service need not be provided to a borrower other than at the office designated to serve the borrower nor other than from the immediate vicinity of the security property.

(ii) The mortgagee shall provide the borrower with the telephone number where the borrower may speak to employee(s) specifically designated by the mortgagee or its servicer to address inquiries concerning mortgages insured under this part. Such information shall be provided annually and whenever the servicer or the designated employee (or employee group) changes.

(3) Mortgagees must respond to FHA requests for information concerning individual accounts.

§ 206.205 Property charges.

(a) *General.* (1) The borrower shall be responsible for the payment of the following property charges before or on the due date: Ground rents, condominium fees, planned unit development fees, homeowners association fees and all utilities.

(2) Payment of the following property charges are obligations of the borrower and shall be made through the LESA, by the borrower, or by the mortgagee, in accordance with paragraphs (b) through (e) of this section on or before the due date: Property taxes, including any special assessments levied by local or State law, hazard insurance premiums, and applicable flood insurance premiums.

(b) *Method of property charge payment.* (1) *LESA required.* For fixed or adjustable interest rate HECMs, based on the results of the Financial Assessment, the mortgagee may require the borrower to have a Fully-Funded LESA for the payment of property charges identified in paragraph (a)(2) of this section. For adjustable interest rate HECMs, based on the results of the Financial Assessment, the mortgagee may require the borrower to have a Partially-Funded LESA for the payment of property charges identified in paragraph (a)(2) of this section.

(2) *LESA not required.* If, based on the results of the Financial Assessment, the mortgagee does not require the borrower to have a LESA, the borrower shall elect one of the following at closing, whereby an election of the option in paragraph (b)(2)(ii) or (iii) of this section cannot be cancelled by the borrower:

(i) Borrower is responsible for the independent payment of all property charges;

(ii) Borrower elects to have a Fully-Funded LESA for the payment of property charges identified in paragraph (a)(2) of this section; or

(iii) For adjustable interest rate HECMs only, borrower elects to have the mortgagee pay property charges listed in paragraph (a)(2) of this section and ground rents which would have otherwise been required to be paid by the borrower, in accordance with paragraph (d) of this section.

(c) *Life Expectancy Set Aside.* (1) *General.* (i) For a Fully-Funded LESA, the mortgagee shall:

(A) Make payments for property charges identified in paragraph (a)(2) of this section before bills become delinquent and establish controls to ensure that the information needed to pay such bills is obtained on a timely basis;

(B) Make early payments to take advantage of a discount whenever it is to the borrower's advantage;

(C) Not charge the borrower penalties for late payments for property charges unless it can be shown that the penalty was the direct result of the borrower's error or omission;

(D) Ensure that LESA funds are not held in an escrow account;

(E) Add payments for property charges to the outstanding loan balance when the mortgagee disburses funds to the taxing authority or insurance carrier; and

(F) Provide written notification to the borrower and FHA within 30 days of the mortgagee receiving notification that a property charge payment is outstanding when there are no funds or insufficient funds remaining in the LESA, and recommend that the borrower speak with a HUD-Approved Housing Counselor.

(ii) For a Partially-Funded LESA, the mortgagee shall:

(A) Ensure that LESA funds are disbursed to the borrower semi-annually;

(B) Establish controls to ensure the taxing authority, insurance carrier, or both, received the borrower's payment;

(C) Ensure the LESA funds are not held in an escrow account;

(D) Add payments disbursed to the borrower for the payment of property charges identified in paragraph (a)(2) to the outstanding loan balance when the mortgagee disburses the funds; and

(E) Provide written notification to the borrower and FHA within 30 days of the mortgagee receiving notification that a property charge payment is outstanding when there are no funds or insufficient funds remaining in the LESA, and recommend that the borrower speak with a HUD-Approved Housing Counselor.

(2) *Calculation of property charges.* (i) The projected cost of property charges that will be required over the life expectancy of the youngest borrower shall be calculated based on a formula established by the Commissioner.

(ii) The mortgagee shall not require any LESA to be funded in excess of the projected cost of property charges.

(iii) For a Fully-Funded LESA, the amount withheld from the mortgage proceeds shall equal the projected cost of property charges.

(iv) For a Partially-Funded LESA, the amount withheld from the mortgage proceeds is based on a calculation of the gap in residual income and may not exceed the projected cost of property charges.

(v) Mortgagees shall use the *HECM Financial Assessment and Property Charge Guide,* or subsequent guide issued by the Commissioner, to determine whether a LESA is required; view the formula for calculating the projected costs of property charges; and view the formulas for calculating the Fully- and Partially-Funded LESA amounts.

(3) *Annual analysis of LESA.* Mortgagees shall perform an annual analysis of the LESA to determine whether the funds are sufficient to make required distributions for the next year. If funds are exhausted or there is an insufficient balance determination, the mortgagee shall notify the borrower, in writing and within 15 calendar days of the annual analysis of the determination, that LESA funds are exhausted or insufficient and the borrower will be responsible for the payment of property charges.

(4) *Non-payment of property charges*—(i) *Fully-Funded LESA for an adjustable interest rate HECM with no remaining funds.* (A) If the LESA is exhausted and the borrower fails to make property charge payments, the mortgagee shall use any available principal limit to pay the outstanding property charge amount in full and charge the borrower's account.

(B) The mortgagee shall provide the borrower with a written notification within 30 days of the mortgagee receiving notification that a property charge payment is outstanding. The borrower shall have 30 days to respond to the mortgagee to explain the circumstances which resulted in the non-payment.

(C) If there is no available principal limit from which the mortgagee can pay the property charge amount in full, and the borrower fails to pay the property charges, the mortgage will become due and payable under § 206.27(c)(2).

(ii) *Fully-Funded LESA for a fixed interest rate HECM with no remaining funds.* If the LESA is exhausted and the borrower fails to make property charge payments, the mortgage will become due and payable under § 206.27(c)(2).

(iii) *Partially-Funded LESA with remaining funds.* If funds remain in the LESA and the borrower fails to make property charge payments, the mortgagee shall:

(A) Immediately suspend future semi-annual payments to the borrower from the Partially-Funded LESA, although scheduled and unscheduled payments from the borrower's payment option may continue;

(B) Disburse funds from the Partially-Funded LESA to pay the full amount owed for the past due property charge; and

(C) Provide written notification to the borrower, within 30 days of the mortgagee receiving notification that a property charge payment is outstanding, that funds were advanced from the Partially-Funded LESA to pay the outstanding property charge. The borrower shall have 30 days to respond to the mortgagee to explain the circumstances which resulted in the non-payment.

(iv) *Partially-Funded LESA with no remaining funds.* (A) If the LESA is exhausted and the borrower fails to make property charge payments when due, the mortgagee shall use any funds available in the principal limit to pay the outstanding property charge amount in full and charge the borrower's account.

(B) The mortgagee shall provide written notification to the borrower within 30 days of the mortgagee receiving notification that a property charge payment is outstanding. The borrower shall have 30 days to respond to the mortgagee to explain the circumstances which resulted in the non-payment.

(C) If there is no available principal limit from which the mortgagee can pay the property charge amount in full, and the borrower fails to pay the property charges, the mortgage will become due and payable under § 206.27(c)(2).

(5) *Unused LESA funds.* During a Deferral Period or when one of the events listed in § 206.27(c)(1) or (c)(2) have occurred, no unused funds from the LESA shall be disbursed.

(6) *Assignment of mortgage to the Commissioner.* If the insured first mortgage is assigned to the Commissioner, or if payments are made through the second mortgage under the Demand Assignment process, the Commissioner is not required to assume the responsibility for property charge payments, but may continue to administer payments for property charges for a borrower with a Fully-Funded LESA or semi-annual disbursements to a borrower with a Partially-Funded LESA to the extent that there are any funds available in the LESA. For adjustable interest rate HECMs, if the LESA has a positive remaining balance but funds are insufficient to pay all property charges due or semi-annual disbursements to the borrower, the Commissioner may provide the remaining funds to the borrower as a line of credit.

(d) *Borrower elects to have mortgagee pay property charges.* If, based on the results of the Financial Assessment, the mortgagee does not require the borrower to have a LESA, for adjustable interest rate HECMs, the borrower may elect at closing to require the mortgagee to pay property charges identified in paragraph (a)(2) of this section and ground rents by withholding funds from monthly payments due to the borrower or by charging such funds to a line of credit. This voluntary election to have funds withheld by the mortgagee to pay property charges cannot be canceled by the borrower at any time. If the sum of the outstanding loan balance and any unused set aside for repairs and servicing charges has reached the principal limit or the HECM proceeds are otherwise insufficient to pay the property charges, the borrower shall pay such property charges, even though the borrower elected payment to be made by the mortgagee.

(1) *Assignment of mortgage to the Commissioner.* If the insured first mortgage is assigned to the Commissioner under § 206.107(a)(1) or § 206.121(b), or if payments are made through the second mortgage under § 206.121(c), the Commissioner is not required to assume the mortgagee's responsibility under paragraph (d) of this section, despite the election by the borrower.

(2) *Mortgagee's responsibilities.* (i) Funds withheld from payments due to the borrower for property charges under paragraph (d) of this section shall not be paid into an escrow account. When property charges are actually paid, the mortgagee may add the amount paid to the outstanding loan balance.

(ii) It is the mortgagee's responsibility to make disbursements for property charges before bills become delinquent. Mortgagees shall establish controls to ensure that the information needed to pay such bills is obtained on a timely basis. Penalties for late payments for property charges must not be charged to the borrower unless it can be shown that the penalty was the direct result of the borrower's error or omission. Early payment of a bill to take advantage of a discount should be made whenever it is to the borrower's benefit.

(iii) Not later than the end of the second loan year the mortgagee shall establish a system for the periodic analysis of the amounts withheld from monthly payments. The analysis shall be performed at least once a year thereafter. The amount shall be adjusted, after analysis, to provide sufficient available funds to make anticipated disbursements during the ensuing year. The borrower shall be given at least ten days' notice of adjustment in the amount of withholding and an adequate explanation of the reasons for any change. When the amount withheld is analyzed in accordance with this paragraph, any surplus shall be paid to the borrower and added to the outstanding loan balance. Any shortage shall be corrected through increasing the monthly withholding as provided in paragraph (d)(2)(iv) of this section. If amounts withheld are insufficient to pay a property charge before it is delinquent, and the borrower could request a payment equal to the shortage under § 206.26(b), then the mortgagee shall pay the full property charge and treat payment of the shortage as a payment requested by the borrower under § 206.26(b).

(iv) The mortgagee's estimate of withholding amount shall be based on the best information available as to probable payments which will be required to be made for property charges in the coming year. If actual disbursements during the preceding year are used as the basis, the resulting estimate may deviate from those disbursements by as much as ten percent. The mortgagee may not require withholding in excess of the current estimated total annual requirement, unless expressly requested by the borrower. Each monthly withholding for property charges shall equal one-twelfth of the annual amounts as reasonably estimated by the mortgagee.

(e) *Borrower elects to pay property charges.* (1) If, based on the results of the Financial Assessment, the mortgagee does not require the borrower to have a LESA, the borrower may elect to be responsible for the independent payment of all property charges and shall pay all property charges in a timely manner and shall provide evidence of payment to the mortgagee as required in the mortgage.

(2) *Failure to pay property charges.* If the borrower fails to pay the property charges in a timely manner, and has not elected to have the mortgagee make the payments in accordance with paragraph (d) of this section:

(i) The mortgagee may make the payment for the borrower and charge the borrower's account if there are available funds from which the mortgagee may make payment. If a pattern of missed payments occurs, the mortgagee may establish procedures to pay the property charges from the borrower's funds as if the borrower elected to have the mortgagee pay the property charges under this section.

(ii) The mortgagee shall provide a written notification to the borrower and notify the Commissioner that an obligation of the mortgage has not been performed within 30 days of the mortgagee receiving notification of a missed payment when there are no available HECM funds from which the mortgagee may make payment. The borrower shall have 30 days to respond to the mortgagee to explain the circumstances which resulted in the non-payment. The mortgagee may provide any permissible loss mitigation made available by the Commissioner through notice. If the borrower is unable or unwilling to repay the mortgagee for any funds advanced by the mortgagee to pay property charges outside of a LESA, the mortgagee shall submit a due and payable request under the provisions of § 206.27(c)(2).

§ 206.207 Allowable charges and fees after endorsement.

(a) *Reasonable and customary charges.* The mortgagee may collect reasonable and customary charges and fees from the borrower after insurance endorsement, only to the extent that the mortgagee is not reimbursed for such fees by FHA, by adding them to the outstanding loan balance, but only for: Items listed in paragraph (a)(1) of this section; items authorized by the Commissioner under paragraph (a)(2) of this section, or as provided at § 206.26(b)(1)(iii); or charges and fees related to additional documents described in § 206.27(b)(10) and related title search costs.

(1)(i) Charges for substitution of a hazard insurance policy at other than the expiration of term of the existing hazard insurance policy;

(ii) Attorney's and trustee's fees and expenses actually incurred (including the cost of appraisals and cost of advertising) when a case has been referred for foreclosure in accordance with the provisions of this part after a firm decision to foreclose if foreclosure is not completed because of a reinstatement of the account (no attorney's fee may be charged for the services of the mortgagee's or servicer's staff attorney or for the services of a collection attorney other than the attorney handling the foreclosure);

(iii) A trustee's fee if the security instrument in deed-of-trust states provides for payment of such a fee for execution of a satisfactory, release, or trustee's deed when the deed of trust is paid in full;

(iv) Where permitted by the security instrument, attorney's fees and expenses actually incurred in the defense of any suit or legal proceeding wherein the mortgagee shall be made a party thereto by reason of the mortgage (no attorney's fee may be charged for the services of the mortgagee's or servicer's staff attorney); and

(v) Property preservation expenses incurred pursuant to § 206.140.

(2) Such other reasonable and customary charges as may be authorized by the Commissioner, but which shall not include:

(i) Charges for servicing activities of the mortgagee or servicer;

(ii) Fees charged by independent tax servicer organizations which contract to furnish data and information necessary for the payment of property taxes;

(iii) *Satisfaction, termination,* or *reconveyance* fees when a mortgage is paid in full (other than as provided in paragraph (a)(1)(iii) of this section); or

(iv) The fee for recordation of a satisfaction of the mortgage in states where recordation is the responsibility of the mortgagee.

(b) *Servicing charges.* (1) If the following conditions are met, the mortgagee may include a servicing charge in the mortgage Note rate, starting with the month of loan closing and continuing through the life of the loan, including any applicable Deferral Period:

(i) The charge is authorized by the Commissioner;

(ii) The charge is selected by the mortgagee;

(iii) The charge is within the range established by the Commissioner, which shall be set, through notice, in an amount which shall be between 36 and 150 basis points. The Commissioner may, through a **Federal Register** notice for comment, extend the range of permissible charges below 36 basis points and above 150 basis points; and

(iv) The charge is disclosed as required by § 206.43 to the borrower in a manner acceptable to the Commissioner at the time the mortgagee provides the borrower with a loan application; or

(2) If the following conditions are met, the mortgagee may collect, starting with the month of loan closing and continuing through any applicable Deferral Period, a fixed monthly charge for servicing activities of the mortgagee or servicer:

(i) The charge is authorized by the Commissioner;

(ii) The charge is disclosed as required by § 206.43 to the borrower in a manner acceptable to the Commissioner at the time the mortgagee provides the borrower with a loan application;

(iii) Amounts to pay the charge are set aside as a portion of the principal limit in accordance with § 206.19(f)(3); and

(iv) The charge is payable only from the Servicing Fee Set Aside.

§ 206.209 Prepayment.

(a) *No charge or penalty.* The borrower may repay a mortgage in full or prepay a mortgage in part without charge or penalty at any time, regardless of any limitations on repayment or prepayment stated in a mortgage.

(b) *Insurance and condemnation proceeds.* If insurance or condemnation proceeds are paid to the mortgagee, the principal limit and the outstanding loan balance shall be reduced by the amount of the proceeds not applied to restoration or repair of the damaged property.

(c) Funds received from a partial prepayment shall be applied in accordance with the Note.

§ 206.211 Determination of principal residence and contact information.

(a) *Annual certification.* At least once during each calendar year, the mortgagee shall verify the contact information for the borrower(s) and determine whether or not the property is the principal residence of at least one borrower. The mortgagee shall require each borrower to make an annual certification of his or her contact information and principal residence. As part of the annual certification, the borrower may designate a point of contact to receive copies of the notifications from the mortgagee, and who the mortgagee may contact if the borrower is unwilling or unable to reply to requests from the mortgagee. The mortgagee may rely on the certification unless it has information indicating that the certification may be false.

(b) *Requirements when an Eligible Non-Borrowing Spouse exists.* Where an Eligible Non-Borrowing Spouse has been identified, the mortgagee shall obtain an additional annual certification from the borrower confirming the Eligible Non-Borrowing Spouse remains his or her spouse and the Eligible Non-Borrowing Spouse continues to reside in the property as his or her principal residence.

(1) *Death of borrower with Eligible Non-Borrowing Spouse.* If a borrower with an Eligible Non-Borrowing Spouse has died, the mortgagee shall obtain the annual certification in paragraph (a) of this section from the Eligible Non-Borrowing Spouse. For purposes of this paragraph, the term "Eligible Non-Borrowing Spouse" shall replace the term "borrower" in paragraph (a) of this section.

(2) *Failure of previously Eligible Non-Borrowing Spouse to reside in the property as his or her principal residence.* If a Non-Borrowing Spouse fails to reside in the property as his or her principal residence, the Non-Borrowing Spouse becomes an Ineligible Non-Borrowing Spouse and the deferral of due and payable status that would

prevent the displacement of an Eligible Non-Borrowing Spouse will no longer be in effect. Once this occurs, the Eligible Non-Borrowing Spouse annual certifications are no longer required to be obtained.

Subpart E—HECM Counselor Roster

§ 206.300 General.

This subpart provides for the establishment of the HECM Counselor Roster (Roster) and sets forth the requirements for the operation of the HECM Counselor Roster.

§ 206.302 Establishment of the HECM Counselor Roster.

(a) *HECM Counselor Roster.* FHA maintains a Roster of HECM counselors. Only counselors listed on the Roster and employed by a participating agency are approved to provide HECM counseling. A prospective borrower applying for a HECM loan to be insured by FHA must receive the required HECM counseling from one of the counselors on the Roster.

(b) *Disclaimer.* The inclusion of a HECM counselor on the Roster does not create or imply a warranty or endorsement by FHA of the listed counselor to a prospective HECM borrower or to any other organization or individual, nor does it represent a warranty of any counseling provided by the listed HECM counselor. The inclusion of a counselor on the Roster means that a listed counselor has met the FHA-prescribed qualifications and conditions for inclusion on the Roster and that the counselor is approved to provide HECM counseling by telephone or face-to-face.

§ 206.304 Eligibility for placement on the HECM Counselor Roster.

(a) *Application.* To be considered for placement on the Roster, a housing counselor must apply to FHA in a form and in a manner prescribed by the Commissioner.

(b) *Eligibility.* FHA will approve an application for placement on the Roster if the application demonstrates that the housing counselor:

(1) Is employed by a HUD-approved housing counseling agency or an affiliate of a HUD-approved intermediary or State housing finance agency;

(2) Successfully passed a standardized HECM counseling exam administered by FHA, or a party selected by FHA, within the last 3 years. In order to maintain eligibility, a HECM counselor must successfully pass a standardized HECM counseling exam every 3 years;

(3) Received training and education related to HECMs within the prior 2 years;

(4) Has access to and is supported by technology that enables FHA to track the results of the counseling offered to each loan applicant, *e.g.,* what action(s), if any, did the client take after receiving the HECM counseling; and

(5) Is not listed on:

(i) The General Services Administration's Suspension and Debarment List;

(ii) HUD's Limited Denial of Participation List; or

(iii) HUD's Credit Alert Interactive Response System.

§ 206.306 Removal from the HECM Counselor Roster.

(a) *General.* FHA reserves the right to remove a HECM counselor from the Roster, in accordance with this section.

(b) *Cause for removal.* Cause for removal of a HECM counselor from the Roster includes, but is not limited to:

(1) Failure to comply with the education and training requirements of § 206.308;

(2) Failure to respond within a reasonable time to HUD inquiries or requests for documentation;

(3) Misrepresentation or fraudulent statements;

(4) Promotion, representation, or recommendation of any specific mortgagee;

(5) Failure to comply with applicable fair housing and civil rights requirements;

(6) Failure to comply with applicable statutes and regulations;

(7) Failure to comply with applicable statutory counseling requirements found at subsection 255(f) of the National Housing Act, which include, but are not limited to, providing information about: Options other than a HECM, the financial implications of entering into a HECM, the tax consequences of a HECM, and any other information that HUD or the applicant may request;

(8) Failure to maintain any registration, license, or certification requirements of a State or local authority;

(9) Unsatisfactory performance in providing counseling to HECM loan applicants. FHA may determine that a HECM counselor's performance is unsatisfactory based on a review of counseling files or other monitoring activities, or if the counselor fails to employ the minimum competencies, as measured by the FHA-administered HECM counseling exam; or

(10) For any other reason HUD determines to be so serious as to justify an administrative sanction.

(c) *Automatic removal from HECM Counselor Roster for failure to maintain required State or local licensure.* A HECM counselor who is required to maintain a State or local registration, license, or certification and whose registration or certification is revoked, suspended, or surrendered will be automatically suspended from the Roster until FHA receives evidence demonstrating that the local- or State-imposed sanction has been lifted.

(d) *Removal procedure.* Except as provided in paragraph (c) of this section, the following procedures apply to removal of a HECM counselor from the Roster.

(1) FHA will give the HECM counselor written notice of the proposed removal. The notice will state the reasons for and the duration of the proposed removal.

(2) The HECM counselor will have 30 days from the date of receipt of the notice (or such time as described in the notice, but in no event less than a period of 30 days) to submit a written appeal of the proposed removal, along with a written request for a conference.

(3) An FHA official will review the appeal and render a response affirming, modifying, or canceling the removal. The FHA official will not be a person who was involved in FHA's initial removal decision. FHA will respond with a decision within 30 days after the date of receiving the appeal or, if the HECM counselor has requested a conference, within 30 days after the conference was held. FHA may extend the 30-day period by providing written notice to the counselor.

(4) If the HECM counselor does not submit a timely written response, the removal will be effective 31 days after the date of FHA's initial removal notice (or after the period provided in the notice, if longer than 30 days). If a written response is submitted, and the removal decision is affirmed or modified, the removal will be effective on the date of FHA's notice affirming or modifying the initial removal decision.

(e) *Maximum time period of removal.* The maximum time period for removal from the Roster is 12 months from the effective date of removal for all removed counselors. A counselor who has been removed must apply for reinstatement on the Roster.

(f) *Placement on the Roster after removal.* A counselor who has been removed from the Roster must apply for reinstatement on the Roster (in accordance with § 206.304) after the period of the counselor's removal from the Roster has expired. FHA may require the counselor to retake and pass the HECM exam for reinstatement when the reason for removal from the Roster was particularly egregious. Typically, the counselor will not be required to take and pass the HECM exam; however, FHA must be ensured by the counselor that the HECM counseling requirements are understood and will be followed. An application from a counselor for reinstatement on the Roster will be rejected if the period of the counselor's removal from the Roster has not expired.

(g) *Voluntary removal.* A HECM counselor will be removed from the Roster upon FHA's receipt of a written request from the counselor.

(h) *Other action.* Nothing in this section prohibits HUD from taking such other action against a HECM counselor or from seeking any other remedy against a counselor available to HUD by statute or other authority.

§ 206.308 Continuing education requirements of counselors listed on the HECM Counselor Roster.

A HECM counselor listed on the Roster must receive, on a continuing basis, training, education, and technical assistance related to HECMs. The HECM counselor must maintain evidence of the successful completion of such continuing education, and such evidence must be made available to FHA upon request. FHA will consider a HECM counselor's successful completion of a HECM course no less than once every 2 years as satisfying the requirements of this section.

Dated: April 19, 2016.

Edward L. Golding,

Principal Deputy, Assistant Secretary for Housing.

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Transnational Drug Trafficking Act of 2015 (May 16, 2016; 130 Stat. 387)

S. 125/P.L. 114–155
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